

6-21-2010

Beus v. Beus Clerk's Record v. 2 Dckt. 37384

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LAW CLERK

Vol 2 of 4

**IN THE
SUPREME COURT
OF THE
STATE OF IDAHO**

DALLAS BEUS, Individually;

DOUG BEUS, Individually;

vs. Plaintiffs-RespondentsJohn C. Souza, Trustee of the Lynn G. Beus
Trust; Jerry Beus, Individually,Defendants,

Jerry Beus

vs. Cross-Claimant/Appellant,John C. Souza, Trustee of the Lynn G. Beus
Trust Cross-Defendant/RespondentHon. David C. Nye District JudgeAppealed from the District Court of the Sixth
Judicial District of the State of Idaho, in and for
Bannock County.Stephen C. SmithHawley Troxell Enis & Hawley LLPAttorney X For Appellant XRandall C. BudgeRacine, Olson, Nye, Budge & Bailey, CharteredAttorney X For Respondent X

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day of

2008

JUN 21 2010

Clerk

Deputy

Supreme Court

Court of Appeals

Entered on 6/21/10

37384

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

DALLAS BEUS, individually;)
DOUG BEUS, individually,)

Plaintiffs-Respondents,)

Vs.)

JOHN C. SOUZA, Trustee of the Lynn G.)
Beus Trust; JERRY BEUS, individually,)

Defendants,)

Supreme Court No. 37384

Volume II

JERRY BEUS,)

Cross-Claimant/Appellant,)

Vs.)

JOHN C. SOUZA, Trustee of the Lynn G.)
Beus Trust,)

Cross-Defendant)
Respondent)

CLERK'S RECORD

Appeal from the District Court of the Sixth Judicial District of the State of
Idaho, in and for the County of Bannock.

Before **HONORABLE David C. Nye**, District Judge.

For Appellant:

**Stephen C. Smith
Hawley Troxell Ennis & Hawley LLP
P.O. Box 1617
Boise, Idaho 83701-1617**

For Respondent:

**Randall C. Budge
Racine, Olson, Nye
Budge & Bailey, Chartered
P.O. Box 1391
Pocatello, Idaho 83204-1391**

**Thomas J. Holmes
Jones, Chartered
P.O. Box 967
Pocatello, Idaho 83204**

TABLE OF CONTENTS

VOLUME I

VERIFIED COMPLAINT FOR RELIFE AND DECLARATORY JUDGMENT, filed 5-6-09	1
DEFENDANT JERRY BEUS' ANSWER TO VERIFIED COMPALINT FOR RELIEF AND DECLARATORY JUDGMENT, filed 8-10-09	88
ORDER FOR SUBMISSION OF INFORMATION FOR SCHEDULING ORDER, filed 8-26-09	99
MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 9-3-09	102
MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 9-3-09	105

VOLUME II

SUPPORTING AFFIDAVIT OF RANDDALL C. BUDGE, filed 9-3-09	137
---	-----

VOLUME III

CERTIFICATE OF SERVICE, filed 9-3-09	393
JOINT STATEMENT OF INFORMATION FOR SCHEDULING ORDER, filed 9-8-09	395
DEFENDANT JERRY BEUS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 10-5-09	399
AFFIDAVIT OF STEPHEN C. SMITH IN SUPPORT OF DEFENDANT JERRY BEUS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 10-5-09	418
AFFIDAVIT OF THOMAS J. HOLMES, filed 10-13-09	488
PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 10-13-09	519

CERTIFICATE OF SERVICE, filed 10-13-09	537
DECISION ON MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 11-23-09	542
MOTION FOR JUDGMENT AND RULE 54(b) CERTIFICATE, filed 12-8-09	555
MOTION FOR ORDER AWARDING ATTORNEYS; FEES AND COSTS, filed 12-8-09	558
MEMORANDUM OF FEES AND COSTS, filed 12-8-09	563
MINUTE ENTRY AND ORDER, filed 1-5-10	567
MOTION TO APPROVE OR DISAPPROVE SALE AND, IF APPROVED, TO DECLARE JERRY BEUS' RIGHT OF FIRST REFUSAL TO HAVE LAPSED, filed 1-8-10	569
PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO APPROVE SALE, CONFIRM DISPOSITION OF PROCEEDS AND OBLIGATIONS OF JERRY BEUS, filed 1-20-10.....	571

VOLUME IV

RESPONSE TO MOTION TO APPROVE OR DISAPPROVE SALE AND, IF APPROVED, TO DECLARE JERRY BEUS' RIGHT OF FIRST REFUSAL TO HAVE LAPSED, filed 1-15-10	583
MOTION TO APPROVE SALE, CONFIRM DISPOSITION OF PROCEEDS AND OBLIGATIONS OF JERRY BEUS, filed 1-19-10	589
ORDER APPROVING SALE, filed 1-27-10	592
JUDGMENT AND RULE 54(b) CERTIFICATE, filed 1-27-10.....	596
NOTICE OF APPEAL BY JERRY BEUS, filed 2-1-10.....	602
DECISION ON MOTION FOR ATTORNEY FEES, filed 2-4-10	609
MOTION FOR LEAVE TO AMEND COMPLAINT, filed 2-22-10	618
PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR LEAVE TO AMEND COMPLAINT, filed 2-22-10.....	625

AMENDED COMPALINT, filed 3-9-10	635
STIPULATION, filed 3-3-10.....	639
ORDER GRANTING LEAVE OF COURT TO AMEND PLAINTIFFS' COMPLAINT, filed 3-4-10	641
DEFENDANT DBL COMPANY, INC.'S MOTION FOR TEMPORARY RESTRAINING ORDER, filed 4-2-10	643
MINUTE ENTRY AND ORDER, filed 4-20-10	646
DEFENDANT DBL COMPANY, INC.'S MOTION TO DISMISS AMENDED COMPLAINT, filed 4-15-10	649
DEFENDANT DBL COMPANY, INC.'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT, filed 4-15-10	652
MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 4-13-10.....	673
MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 4-3-10	676
AFFIDAVIT OF COUNSEL, filed 4-13-10.....	693
DEFENDANT DBL COMPANY, INC.'S OBJECTION TO LAKEY LEASE AND MOTION FOR DECLARATORY RELIEF, filed 4-15-10	702
DEFENDANT DBL COMPANY, INC.'S MOTION TO DISMISS AMENDED COMPLAINT, filed 4-15-10	708
DEFENDANT DBL COMPANY, INC.'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED COMPALINT, filed 4-15-10	711
NOTICE OF LODGING, dated 3-23-10	732
CLERKS CERTIFICATE,	733
CERTIFICATE OF SERVICE	735

INDEX

AFFIDAVIT OF COUNSEL, filed 4-13-10	693
AFFIDAVIT OF STEPHEN C. SMITH IN SUPPORT OF DEFENDANT JERRY BEUS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 10-5-09	418
AFFIDAVIT OF THOMAS J. HOLMES, filed 10-13-09	488
AMENDED COMPALINT, filed 3-9-10	635
CERTIFICATE OF SERVICE	735
CERTIFICATE OF SERVICE, filed 10-13-09	537
CERTIFICATE OF SERVICE, filed 9-3-09	393
CLERKS CERTIFICATE,	733
DECISION ON MOTION FOR ATTORNEY FEES, filed 2-4-10	609
DECISION ON MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 11-23-09	542
DEFENDANT DBL COMPANY, INC.'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT, filed 4-15-10	652
DEFENDANT DBL COMPANY, INC.'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED COMPALINT, filed 4-15-10	711
DEFENDANT DBL COMPANY, INC.'S MOTION FOR TEMPORARY RESTRAINING ORDER, filed 4-2-10	643
DEFENDANT DBL COMPANY, INC.'S MOTION TO DISMISS AMENDED COMPLAINT, filed 4-15-10	649
DEFENDANT DBL COMPANY, INC.'S MOTION TO DISMISS AMENDED COMPLAINT, filed 4-15-10	708
DEFENDANT DBL COMPANY, INC.'S OBJECTION TO LAKEY LEASE AND MOTION FOR DECLARATORY RELIEF, filed 4-15-10	702

DEFENDANT JERRY BEUS' ANSWER TO VERIFIED COMPLAINT FOR RELIEF AND DECLARATORY JUDGMENT, filed 8-10-09	88
DEFENDANT JERRY BEUS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 10-5-09	399
JOINT STATEMENT OF INFORMATION FOR SCHEDULING ORDER, filed 9-8-09	395
JUDGMENT AND RULE 54(b) CERTIFICATE, filed 1-27-10.....	596
MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 9-3-09	105
MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 4-3-10	676
MEMORANDUM OF FEES AND COSTS, filed 12-8-09	563
MINUTE ENTRY AND ORDER, filed 1-5-10	567
MINUTE ENTRY AND ORDER, filed 4-20-10	646
MOTION FOR JUDGMENT AND RULE 54(b) CERTIFICATE, filed 12-8-09	555
MOTION FOR LEAVE TO AMEND COMPLAINT, filed 2-22-10	618
MOTION FOR ORDER AWARDING ATTORNEYS; FEES AND COSTS, filed 12-8-09	558
MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 4-13-10.....	673
MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 9-3-09.....	102
MOTION TO APPROVE OR DISAPPROVE SALE AND, IF APPROVED, TO DECLARE JERRY BEUS' RIGHT OF FIRST REFUSAL TO HAVE LAPSED, filed 1-8-10	569
MOTION TO APPROVE SALE, CONFIRM DISPOSITION OF PROCEEDS AND OBLIGATIONS OF JERRY BEUS, filed 1-19-10	589
NOTICE OF APPEAL BY JERRY BEUS, filed 2-1-10.....	602
NOTICE OF LODGING, dated 3-23-10	732

ORDER APPROVING SALE, filed 1-27-10	592
ORDER FOR SUBMISSION OF INFORMATION FOR SCHEDULING ORDER, filed 8-26-09	99
ORDER GRANTING LEAVE OF COURT TO AMEND PLAINTIFFS' COMPLAINT, filed 3-4-10	641
PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR LEAVE TO AMEND COMPAINT, filed 2-22-10	625
PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO APPROVE SALE, CONFIRM DISPOSITION OF PROCEEDS AND OBLIGATIONS OF JERRY BEUS, Filed 1 -20-10	571
PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 10-13-09	519
RESPONSE TO MOTION TO APPROVE OR DISAPPROVE SALE AND, IF APPROVED, TO DECLARE JERRY BEUS' RIGHT OF FIRST REFUSAL TO HAVE LAPSED, filed 1-15-10	583
STIPULATION, filed 3-3-10	639
SUPPORTING AFFIDAVIT OF RANDDALL C. BUDGE, filed 9-3-09	137
VERIFIED COMPLAINT FOR RELIEF AND DECLARATORY JUDGMENT, filed 5-6-09	1

VOLUME I

VOLUME II

VOLUME III

VOLUME IV

Dallas Beus, Doug Beus vs. John C. Souza, Jerry Beus, DBL Company, Inc., an Idaho corporation

Date	Code	User	Judge
5/6/2009	NCOC	DCANO	Court records
	COMP	DCANO	Verified Complaint for Relief and Declaratory Judgment Filed
	SMIS	DCANO	Summons Issued
		DCANO	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: Racine, Olson Receipt number: 0017405 Dated: 5/6/2009 Amount: \$88.00 (Check) For:
	ATTR	JANA	Plaintiff: Beus, Dallas Attorney Retained Randall C Budge
	ATTR	JANA	Plaintiff: Beus, Doug Attorney Retained Randall C Budge
5/26/2009		MARLEA	Filing: 17 - All Other Cases Paid by: hawley troxell ennis and hawley Receipt number: 0019758 Dated: 5/26/2009 Amount: \$58.00 (Check) For: Beus, Jerry (defendant)
	ATTR	BRANDY	Defendant: Beus, Jerry Attorney Retained Stephen C Smith
	NOAP	BRANDY	Notice Of Appearance; Stephen Smith aty for dfdt Jerry Beus
5/27/2009		CAMILLE	Acceptance of Service of Process; aty John Souza for plntf
6/3/2009		CAMILLE	Amended notice of taking Depo upon oral Examination; set for 6-25-09 @ 1pm: aty Stephen Smith for def Jerry Beus
		CAMILLE	Amended notice of taking Depo upon oral examination; on 6-30-09 @ 9am: aty Stephen Smith for def Jerry Beus
		CAMILLE	Notice of taking Depo upon Oral Examination; set for 6-26-09 @ 9am: aty Stephen Smith for Jerry Beus
		CAMILLE	Notice of taking Deposition upon oral examination; set for 6-25-09 @ 9am: aty Stephen Smith for Jerry Beus
6/4/2009		CAMILLE	Affidavit of Service - srvd on John Souza on 5-21-09
6/11/2009		CAMILLE	Amended Notice of taking Depo upon Oral Examination; 7-1-09 @ 9am aty Stephen Smith for Def Jerry Beus
		CAMILLE	Second Amended Notice of taking Depo upon Oral Examination set for 7-1-09 @ 1pm: aty Stephen Smith
		CAMILLE	Amended Notice of Taking Depo upon Oral Examination; set for 7-2-09 @ 9am: aty Stephen Smith
6/12/2009		CAMILLE	Notice of taking Depo ; set for 6-30-09 @ 9am: aty Randy Budge for plntf

Dallas Beus, Doug Beus vs. John C. Souza, Jerry Beus, DBL Company, Inc., an Idaho corporation

Date	Code	User	Judge
6/12/2009		CAMILLE	Notice of taking Depo on Max Hemmert on 6-2-09 @ 1:30 pm : aty Randy Budge for plntf David C Nye
		CAMILLE	Notice of taking Depo on John Souza on 7-3-09 @ 9 am: aty Rany Budge David C Nye
6/25/2009		CAMILLE	Amended Notice of Taking Deposition ; of John Souza for 7-3-09: aty Randall Budge for plntf David C Nye
7/2/2009		CAMILLE	Amended Notice of taking Depo of Max Hemmert on 7-7-09 @ 9am: aty Randall Budge for plntfs David C Nye
		CAMILLE	Amended Notice of Taking Depo of John Souza on 7-8-09 @ 8am: aty Randall Budge for plntf David C Nye
7/6/2009		CAMILLE	Amended Notice of Taking Depo of M&M Court Reporting Service on 7-7-09 @ 10:30 am: aty Randall Budge David C Nye
7/9/2009		CAMILLE	Notice of intent to take default; aty Randall Budge for plntf David C Nye
8/5/2009		CAMILLE	Second Amended Notice of Taking Depo; John souza @ 10am: aty Randall Budge for plntfs David C Nye
		CAMILLE	Second Notice of Intent to take Default; aty Randall Budge David C Nye
8/10/2009		CAMILLE	Defendant Jerry Beus Answer to Verified Complaint for Relief and Declaratory Judgment; aty Stephen Smith for Def Jerry Beus David C Nye
8/14/2009		MARLEA	Filing: 11 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: jones chartered Receipt number: 0030901 Dated: 8/18/2009 Amount: \$58.00 (Check) For: Souza, John C. (defendant) David C Nye
	NOTC	AMYW	Notice of Appearance; Thomas Holmes, for def John Souza David C Nye
	ATTR	AMYW	Defendant: Souza, John C. Attorney Retained Thomas J Holmes David C Nye
8/26/2009	ORDR	AMYW	Order for Submission of Information for Scheduling Order; /s/ J Nye David C Nye
9/3/2009		CAMILLE	Motion for partial summary Judgment; aty Randy Budge for plntf David C Nye
		CAMILLE	Memorandum in support of Motion for Partial Summary Judgment ; aty Randall Budge for plntf David C Nye
		CAMILLE	Notice of hearing; set for 10-19-09 @ 9am: aty Randall Budge for plntf David C Nye
		CAMILLE	Supporting Affidavit of Randall Budge; aty Randall Budge for plntf David C Nye
		CAMILLE	Certificate of service - srvd Motion for partial summary judgment, Memorandum in Suport of Motion , Supporting Affidavit , Notice of hearing; aty Randall Budge David C Nye
9/4/2009	HRSC	CAMILLE	Hearing Scheduled (Motion 10/19/2009 09:00 AM) David C Nye

Dallas Beus, Doug Beus vs. John C. Souza, Jerry Beus, DBL Company, Inc., an Idaho corporation

Date	Code	User	Judge
9/8/2009		DCANO	Joint Statement of Information for Scheduling Order; Randall C. Budge, Attorney for Plnaintiffs.
10/5/2009		CAMILLE	Affidavit of stephen Smith in Support of Def Jerry Beus Memorandum in Opposition to plntfs Motion for partial summary judgment; aty Stephen Smith
		CAMILLE	Defendants Jerry Beus Memorandum in Opposition to Plaintiffs Motion for Partial Summary Judgment; aty Stephen Smith for def Jerry Beus
10/13/2009		CAMILLE	Plntfs Reply Memorandum in support of Motion for Partial Summary Judgment; aty Randy Budge for plntf
		CAMILLE	Certificate of Service - Plntfs Reply Memorandum in support of Motion for Partial Summary Judgment ; aty Randall Budge for plntf
		DCANO	Notice of Lease Termination: Affidavit of Service, served Jerry Beus on 10-8-09 at 3121 Wood Canyon Road, Soda Springs, Idaho.
		DCANO	Notice of Lease Termination; Served Jerry Beus on 10-8-09, Thomas J. Holmes Attorney for Lessor.
		DCANO	Notice to Quit or To Pay Rent; Served Jerry Beus on 10-8-09, Thomas J. Holmes Attorney for Lessor.
		DCANO	Affidavit of Thomas J. Holmes; filed/dated 10-12-09; Thomas J. Holmes, Atty.
10/19/2009	DCHH	AMYW	Hearing result for Motion held on 10/19/2009 09:00 AM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Less than 100 pages.
11/23/2009	DPWO	CAMILLE	Decision on Motion for Partial Summary Judgment; Court GRANTS Motion for Partial Summary Judgment: J Nye 11-23-09
12/8/2009		CAMILLE	Motion for Judgment and Rule 54b certificate; aty Randy Budge for plntf
		CAMILLE	Motion for Order awarding attorneys fees and costs; aty Randy Budge for plntf
		CAMILLE	Affidavit of Randall Budge in support of fees and costs; aty Randy Budge for plntf
		CAMILLE	Memorandum of Fees and Costs; aty Randy Budge for plntf
12/28/2009		CAMILLE	Memorandum in support of Defs Motion to Disallow fees and Costs; aty Stephen Smith for def Jerry Beus
12/29/2009		CAMILLE	Defs Motion to Disallow Fees and Costs; aty Stephen Smith

Dallas Beus, Doug Beus vs. John C. Souza, Jerry Beus, DBL Company, Inc., an Idaho corporation

Date	Code	User	Judge
1/4/2010		CAMILLE	Supplemental Memorandum in Support of Defs Motion to Disallow plntfs Request for Costs and Fees; aty Stephen Smith for Def/Cross Claimant Jerry Beus
1/5/2010	MEOR	AMYW	Minute Entry and Order; counsel appeared for motion for attorney fees and costs, court took matter under advisement and will issue a decision within 30 days; /s/ J Nye, 1-5-10
1/8/2010		CAMILLE	Motion to Aprove or disapprove sale and if approved, to declare Jerry Beus right of first refusal to have lapsed; aty Tom Holmes
		CAMILLE	Affidavit of Thomas Holmes; aty Tom Holmes
		CAMILLE	Notice of hearing; set for 1-25-2010 @ 10am: aty Tom Holmes
	HRSC	CAMILLE	Hearing Scheduled (Motion 01/25/2010 10:00 AM)
1/15/2010		CAMILLE	Response to Motion to Approve or Disapprove Sale and if Approved, to declare Jerry Beus Rights of First Refusal to Have lapsed: aty Stephen Smith for def/crossclaimant Jerry Beus
	AFFD	DCANO	Affidavit of Nichole C. Trammel in Support of Defendant's Response to Motion to Approve or Disapprove Sale and, if Approved, To Declare Jerry Beus' Right of First Refusal to Have Lapsed.
1/19/2010		CAMILLE	Notice of hearing; set for motion to approve sale, on 1-25-2010 @ 10am: aty Randall Budge for plntf
		CAMILLE	Motion to approve Sale, Confirm Disposition of Proceeds and Obligation of Jerry Beus: aty Randall Budge for plntf
1/20/2010		CAMILLE	Plntfs Memorandum in support of Motin to Approve sale, confirm disposition of Proceeds and obligations of Jerry Beus; aty Randall Budge for plntf
1/21/2010		CAMILLE	Affidavit of Randall Budge; aty Randall Budge
		CAMILLE	Affidavit of Lisa Ayers; aty RAndall Budge for plntf
1/25/2010	DCHH	AMYW	Hearing result for Motion held on 01/25/2010 10:00 AM: District Court Hearing Held Court Reporter: Waived Number of Transcript Pages for this hearing estimated: Less than 100 pages.
1/27/2010		CAMILLE	Order Approving Sale; J Nye 1-27-2010
	DPWO	CAMILLE	Judgment and Rule (54)b Certificate; J Nye 1-25-2010 (plntfs may hereafter seek amendment of this Judgment to request additionl attys fees and costs incurred relating to theis Judgment and the collecting of any and all amounts due:

Dallas Beus, Doug Beus vs. John C. Souza, Jerry Beus, DBL Company, Inc., an Idaho corporation

Date	Code	User	Judge
2/1/2010		DCANO	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Hawley Troxell Ennis Receipt number: 0004027 Dated: 2/3/2010 Amount: \$101.00 (Check) For: Beus, Jerry (defendant)
	APSC	DCANO	Appealed To The Supreme Court David C Nye
	NOTC	DCANO	NOTICE OF APPEAL BY JERRY BEUS; Stephen C. Smith, Atty for Jerry Beus. David C Nye
	MISC	DCANO	Received \$15.00 check # 119747, \$86.00 check # 119722 and \$100.00 check 119748 for Filing Fees and Clerk's Record on 2-2-10. David C Nye
2/3/2010	MISC	DCANO	CLERK'S CERTIFICATE OF APPEAL; Signed and Mailed to Supreme Court and Counsel on 2-3-10. David C Nye
2/4/2010		CAMILLE	Decision on Motin for Attorney Fees; (court took the remaining matter concerning atty fees under Advisement . Court now issues its decision Denying atty fees, Plntfs Request for atty fees is Denied) J Nye 2-4-2010 David C Nye
	DPWO	CAMILLE	Disposition Without Trial Or Hearing David C Nye
2/11/2010	MISC	DCANO	IDAHO SUPREME COURT; Clerk's Record and Reporter's Transcript Suspend. Reason for Suspension: Suspended for Dist. Court Entry of Final Judgment. David C Nye
	MISC	DCANO	IDAHO SUPREME COURT; Order Suspending Appeal; Remanded to District Court and proceedings in this appeal shall be suspended to allow for the entry of a judgment. David C Nye
2/22/2010		CAMILLE	Motion for Leave to Amend Complaint; aty Randy Budge for plntf David C Nye
		CAMILLE	Plaintiffs Brief in Support of Motion for Leave to Amend Complaint; aty Randy Budge for plntfs David C Nye
	HRSC	DCANO	Hearing Scheduled (Motion 03/08/2010 10:00 AM) Motion for Leave to Amend Complaint. David C Nye
3/3/2010	STIP	AMYW	Stipulation - parties are agreeable to Plaintiff's Motion for Leave to Amend Complaint David C Nye
3/4/2010	ORDR	AMYW	Order Granting Leave of Court to Amend Plaintiff's Complaint; Plaintiff's Motion for Leave to Amend Complaint and add DBL Company, Inc. as an additional party for the purpose of determining the validity of the DBL Mortgage lien against the trust property is GRANTED, plaintiff may file and serve its amended complaint; /s/ J Nye, 3-4-10 David C Nye
3/8/2010	MISC	DCANO	IDAHO SUPREME COURT; Notice of Appeal received in SC on 2-2-10. Docket # 37384-2010. Clerk's Record and Reporter's Transcript to be filed in SC by 5-7-10. (4-2-10 5 weeks prior). David C Nye
	MISC	DCANO	IDAHO SUPREME COURT; Document filed in Sc Judgment and Rule 54(b)Cert. David C Nye

Dallas Beus, Doug Beus vs. John C. Souza, Jerry Beus, DBL Company, Inc., an Idaho corporation

Date	Code	User	Judge
3/8/2010	HRVC	AMYW	Hearing result for Motion held on 03/08/2010 10:00 AM: Hearing Vacated Motion for Leave to Amend Complaint.
3/9/2010	AMCO	CAMILLE	Amended Complaint Filed; aty Randall Budge or plntfs
	SMIS	CAMILLE	Summons Issued
3/17/2010		CAMILLE	Affidavit of Return; srvd on DBL Company Inc. on 3-12-2010
3/23/2010		CAMILLE	Motion to Approve or disapprove farm lease with option to purchase; aty Tom Holmes
		CAMILLE	Motion for Expedited Hearing; aty Tom Holmes
		CAMILLE	Third Affidavit of Thomas Holmes; aty Tom Holmes
		CAMILLE	Fourth Affidavit of Thomas Holmes; aty Tom Holmes
		CAMILLE	Second Affidavit of Thomas Holmes; aty Tom Holmes
		CAMILLE	Notice of Hearing; set for 3-30-2010 @ 1:30 pm: aty Tom Holmes for def John Souza
	HRSC	CAMILLE	Hearing Scheduled (Motion 03/30/2010 01:30 PM)
	ORDR	AMYW	Order for Expedited Hearing; /s/ Thomas Holmes, atty for Defendant Souza
	MISC	DCANO	REPORTER'S TRANSCRIPT received from Stephanie Morse in Court Records on 3-23-10 for Motion for Partial Summary Judgment held 10-19-09.
	MISC	DCANO	Notice of Lodging; Stephanie Morse on 3-23-10.
3/29/2010		MEGAN	Filing: 11 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Moffatt Thomas Barrett Receipt number: 0011634 Dated: 3/29/2010 Amount: \$58.00 (Check) For: DBL Company, Inc., an Idaho corporation (defendant)
	ATTR	DCANO	Defendant: DBL Company, Inc., an Idaho corporation Attorney Retained Julian E Gabiola
	NOAP	DCANO	Notice Of Appearance; Julian E. Gabiola, Atty for DBL Company, Inc.
	MOTN	DCANO	Defendant DBL Company, Inc.'s Motion to Vacate Hearing on Motion to Approve or Disapprove Farm Lease with Option to Purchase; Julian E. Gabiola, Atty for DBL Company, Inc.
	AFFD	DCANO	Affidavit of Julian E. Gabiola In Support of Motion to Vacate Hearing on Motion to Approve or Disapprove Farm Lease with Option to Purchase; Julian E. Gabiola, Atty for DBL Company, Inc.
3/30/2010	CONT	AMYW	Continued (Motion 04/05/2010 09:00 AM)

Dallas Beus, Doug Beus vs. John C. Souza, Jerry Beus, DBL Company, Inc., an Idaho corporation

Date	Code	User	Judge
4/2/2010	MISC	DCANO	IDAHO SUPREME COURT; Documents Filed in District Court and Supreme court received a copy of: Motion to Approve or Disapprove Farm Lease with Option to Purchase. Second Affidavit of Thomas Holmes, Third Affidavit of Thomas Holmes, Fourth Affidavit of thomas Holmes, Notice of Hearing, Motion for Expedited Hearing and Affidavit of Return.
		DCANO	Defendant DBL Company, Inc.'s Motin for Temporary Restraining Order; Julian E. Gabiola, Atty for Dfdts. DBL Company, INC.
4/13/2010		CAMILLE	Motion for Partial Summary Judgment; aty Randall Budge for plaintiffs
		CAMILLE	Memorandum in support of Motin for Partial Summary Judgment; aty Randall Budge for plaintiffs
		CAMILLE	Affidavit of Counsel; aty Randall Budge for plaintiffs
		CAMILLE	Notice of Hearing; set for (motion at 6-1-2010 @ 9am) aty Randall Budge for Plaintiffs
4/14/2010	HRSC	CAMILLE	Hearing Scheduled (Motion for Summary Judgment 06/01/2010 09:00 AM)
4/15/2010	MISC	DCANO	IDAHO SUPREME COURT; Documents Filed. Notice of Appearance; Defendant DBL Company, Inc.'s Motion to Vacate Hearing on Motion to Approve or Disapprove Farm Lease with Option to Purchase; Affidavit in Support.
		CAMILLE	Defendants DBL company , Inc. Motion to Dismiss Amended Complaint; aty Julian Gabiola for def DBL
		CAMILLE	Defendant DBL Company m Inc's Memorandum in support of motion to dismiss amended Complaint; aty Julian Gabiola for Def DBL
		CAMILLE	Defendant DBL company Inc's Objectijon to Lakey Lease and Motion for Declaratory Relief;
4/20/2010	NOTC	DCANO	Notice of Hearing: Motion for Temporary Restraining Order for April 5th, 2010. at 9:00am.
	MEOR	DCANO	Minute Entry and Order; Regaing Motion for Temporary Restraining Order. The Court Denied DBL Copany, Inc's Motion for Temporary Restraining Order. DBL Company, Inc. can file an objection to the lease once they have reviewed it. It is further order that the money in the trust can pay the taxes on the property. The est of the rental income will need to stay in trust until the remaining issues are resolved. s/Judge David C. Nye on 4-20-10.
4/23/2010	MISC	DCANO	CLERK'S RECORD RECEIVED IN COURT RECORDS ON 4-23-10.

DAWSON COUNTY
CLERK
2000 SEP -3 PM 4:50
DEPUTY CLERK

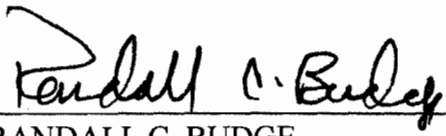
2. Attached hereto are true and correct copies of the following depositions taken herein:

- (1) Dallas Beus
- (2) Doug Beus
- (3) Jerry Beus
- (4) John Souza
- (5) Max Hemmert
- (6) Tom McBride

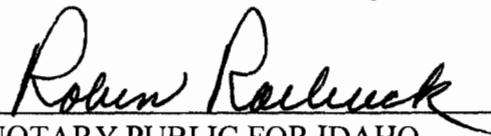
together with deposition exhibits 1 through 16, 26, 27, 35, 36 and 37.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 3rd day of September, 2009.


RANDALL C. BUDGE

SUBSCRIBED AND SWORN TO before me this 3rd day of September, 2009.


NOTARY PUBLIC FOR IDAHO,
Residing at Pocatello.
My Commission Expires 8/18/2012.

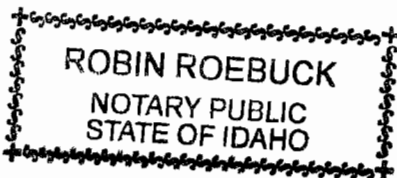


EXHIBIT LIST

Section

Last Will and Testament	1 -
Trust Agreement	2 -
Farm Lease Dated 3/26/1986	3 -
Addendum to Lease Agreement	4 -
Farm Lease Dated 1/1/2007	5 -
Promissory Note to Ireland Bank dated 6/7/02	6 -
Ireland Bank Letters dated 9/24/08 and 10/14/08	7 -
Real Estate Mortgage dated June 7, 2002	8 -
Promissory Note dated 6/7/02	9 -
Real Estate Mortgage 6/7/02	10 -
Promissory Note to DBL dated 5/2/07	11 -
Settlement Statement- DBL dated 5/3/07	12 -
Mortgage to DBL dated 5/2/07	13 -
Jerry Beus Letter to Caribou Land Title	14 -
Caribou Land Title Escrow History Report	15 -
Fellows Appraisal Report	16 -
Claim to a Water Right/11-4039	17
Maps	18
Chicago Title Insurance Commitment	19
Seller Representation Agreement	20
Jerry Beus Individual Tax Return/2004	21
Jerry Beus Individual Tax Return/2007	22
Souza Bills to J. Beus	23
2008 Tax Notices	24
Hemmert 11/30/08 Letter	25
Caribou Land Title 1/16/09 Letter re FLB Mortgage, Release	26 -
Two Caribou Title 2002 Title Commitment & Policy	27 -
J. Beus 2002 Tax Return	28
Beth Beus QC Deed to Trust 6/6/2002 (ask Souza)	29
Ireland Bank Loan File Documents	30
J. Beus Tax Returns	31
Ireland Bank Payment History - Jerry Beus Term Loan	32
Bruce Brown Tax Return File	33
Jerry Beus's 4/9/09 \$6000 check for Second Half Rent	34
RCB to Souza 10/20/08 letter	35 -
RCB to Souza 1/13/09 letter	36 -
Souza to RCB 4/3/09 Letter	37 -
RCB to Souza 5/18/09 letter	38

COPY

FARM LEASE

THIS INDENTURE made and entered into this 1st day of January, 2007, by and between JOHN C. SOUZA, Trustee of the Estate of Lynn Beus, hereinafter referred to as the Lessor; and JERRY BEUS, a single person of Soda Springs, County of Caribou, State of Idaho, hereinafter referred to as Lessee.

WITNESSETH: That for and in consideration of the covenants, conditions, and agreements hereinafter set forth and the payment of the rent hereinafter specified, the Lessor does hereby lease, demise and rent to the Lessee the following described property situated in Caribou County, Idaho, to-wit:

Approximately twenty-five hundred (2500) acres of farming and ranching land, located in the S $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 25; SW $\frac{1}{4}$ of the SW $\frac{1}{4}$; S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 26; SE $\frac{1}{4}$; E $\frac{1}{2}$ of the NE $\frac{1}{4}$; and the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 34; the W $\frac{1}{2}$, the NE $\frac{1}{4}$, the W $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 35; Township 8 South Range 32 EBM: Section 2; tract in Section 3; tract in Section 10; tract in Section 11, in the Township 9 South, Range 42 EBM, in the approximate acreage of 2,521 acres.

TO HAVE AND TO HOLD the said premises together with the appurtenances, rights, privileges, easements thereunto belonging or appertaining, for the period from January 1, 2007 through Dec 31 1, 2014, ^{g/l 9/30} unless this lease is sooner terminated as hereinafter provided. Further, Lessee shall surrender to the Lessor upon the termination of this lease all land in which crops were grown for the crop year when the lease is terminated to allow the Lessor to prepare said lands for crops to be planted during the year following the date of the termination of this lease.

IN CONSIDERATION OF the demising and leasing of said premises as aforesaid, the Lessee covenants, stipulates and agrees to pay:

1. The sum of (\$12,000.00), to be paid to Beth Beus.
2. The taxes on the real property of the trust.

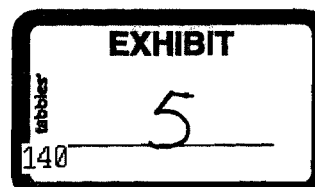


EXHIBIT "E"

3. Any and all payments that may be done in the real property annually.

IT IS UNDERSTOOD AND AGREED that the Lessee shall be compensated for any and all improvements he makes to said leased premises. Said compensation shall be paid to the Lessee herein at the time said improvements are made and completed, as set forth in the terms of the trust.

IT IS FURTHER UNDERSTOOD AND AGREED between the parties heretofore as follows, to-wit:

The Lessee is to maintain the irrigation pumps, mainlines, and sprinkler heads and any irrigation equipment as necessarily used for the irrigation of the farm.

The Lessee is to furnish all fertilizer, spray chemicals and chemicals that might be needed for the operation of the farm in a good and husband-like manner.

The Lessee shall continue to remove rocks which might interfere with the orderly farming operation at his cost and expense.

The Lessee shall maintain the liability and property and fire insurance policy covering the farming operation and the buildings and other property in his possession all to the end that if a catastrophe occurs that said benefits paid under the insurance policy will be able to replace any improvements, homes, outbuildings, pumps or its equivalent. Further, that the property will be protected and will remain in as good a condition as it is now with reasonable wear and tear excepted.

IT IS FURTHER UNDERSTOOD AND AGREED that adjacent to the farm lands heretofore described, there is an old house which is unoccupied. Beth Beus is to have full control over the disposition and use of said house and it shall be her election as to whether there will be any insurance for casualty, fire, or theft upon said premises.

The Lessor shall maintain all irrigation ditches and do all irrigation, in accordance with good and productive irrigation practices. In Lessor's sole discretion and as Lessor sees fit.

The Lessor may pasture the unused portion of lands which are adjacent and contiguous to the farmed land for pasture of his own horses or livestock.

The Lessor shall pay all taxes on the real estate which is owned by the Estate or Trust.

The Lessee shall, at his own proper costs and expense, maintain said fences and be responsible for all repairs thereto during the term of the lease.

The Lessee shall be solely responsible for any and all loss or damage which may be occasioned to Lessee or any other party by virtue by escape of Lessee's stock from the leased premises.

IT IS HEREBY EXPRESSLY UNDERSTOOD AND AGREED that certain portions of the boundaries of the above-described property are subject to existing fencing agreements with adjoining landowners and the Lessee agrees to comply with the terms of the agreements.

Further, Lessee shall keep the leased premises free from noxious and offensive weeds and agrees to spray and eradicate the same whenever necessary, all in accordance with Caribou County Weed Control Regulations.

That Lessee agrees that at the termination of the lease, they will surrender possession of the leased premises to Lessor without further demand or notice. Said premises shall be in good order and condition as the same was when they were entered upon by the Lessee, loss by fire or inevitable accident or ordinary wear and tear excepted.

The Lessee shall not permit or suffer waste on said premises or any damage thereto.

The Lessee shall not assign this lease for rent, sublet or underlet the demised premises, or any part thereof, without first obtaining the previous consent in writing, of the Lessor but the

Lessor agrees that he will not arbitrarily withhold consent to an assignment of this lease or renting, subletting or under letting of the demised premises by the Lessee by a reasonable or reliable person or persons provided, however, any such assignment, renting, subletting or under letting by Lessee, with or without the consent of the Lessor, shall not relieve the Lessee from any of its covenants, agreements, or obligations under this lease.

The Lessee has carefully inspected and examined all property included on the lease, including, but not limited to, the condition of the soil, productivity of the farm, condition of improvements, and conditions and adequacy of the irrigation system and the Lessee accepts the same in an "as is" basis. Any warranty as condition of any property is expressly disclaimed.

That time is of the essence with this agreement and in the event the demised premises are vacated, or default be made in the performance of any of the covenants and conditions conveyed in this lease on the part of the Lessee to be kept or performed, or if the Lessee shall file a petition in bankruptcy or be adjudicated as bankrupt or make any assignments for the benefit of creditors, or take advantage of any insolvency act, and such condition or default shall continue for a period for thirty (30) days after the deposit in the mail by Lessor of a notice from the Lessor sent by registered or certified mail, postage prepaid, to the Lessee at Soda Springs, Idaho or at such other address as maybe given in writing to Lessee to Lessor, demanding payment, performance or removal of any of the aforementioned conditions or compliance with any of the terms and conditions hereof, then the Lessor may, at his election, without further notice, in addition to such other remedies as Lessor may have at law or in equity, terminate this lease and the terms thereof and in such event, after such default, the Lessee shall be deemed guilty of unlawful and forcible detention of the premises. In the event of any forfeiture or termination under the provisions of this lease, either with possession resumed or without possession resumed by the Lessor, the

Lessee shall not, thereby or by otherwise, be released or exonerated from liability to pay the Lessor the rent herein and hereby provided for, but in any such event of default and termination of this agreement, the entire amount of such rent for the full unexpired term of the agreement remaining unpaid, shall be, at once, due and payable to the Lessor from and by the Lessee without demand, as agreed liquidated damages and compensation for such breach of default and its consequence to the Lessor. The Lessor shall be at liberty to relet the premises and in the event of such reletting, only the rental actually paid to and received by the Lessor after deducting therefrom all reasonable costs to the Lessor of such reletting, shall be credited upon the rental or to become due by the Lessee to the Lessor.

That the waiver by the Lessor of any breach by the Lessee hereunder shall not be deemed to be a waiver of any subsequent breach. Failure of the Lessor to insist upon strict performance and Lessor shall not relinquish his right to thereafter and force such performance.

That in addition to the remedies hereinabove recited, the Lessor shall also have such other remedies as are afforded by law or equity in the event of any breach of any of the covenants and conditions herein contained by Lessee.

That Lessor shall have the right to enter upon the premises at any reasonable time to inspect and examine any and all parts thereof.

That this lease shall not be construed to deem to create or give rise to any partnership or employee/employer relationship between the parties.

The Lessee shall, at their expense, maintain public liability insurance insuring the Lessor and Lessee against personal injury or death and property damage claims with a reputable company, arising out of the use and occupancy of the premises and from the operation conducted on said premises with the limits not less than \$50,000.00 per person or \$100,000.00 per accident.

That for and in consideration of the sums heretofore recited as rental to be paid by the Lessee to the Lessor, the Lessor does hereby grant to the Lessee an option to extend the lease for a one (1) year period at a rental price to be negotiated by the parties by Lessee giving notice to the Lessor at P. O. Box 1361, Pocatello, Idaho 83404, to the attention of John C. Souza, or at such other place as the Lessee may designate within ninety (90) days of the expiration of the lease herein provided with the exception that if it should be determined that because of the Estates financial condition that any part of the land should be sold, divided or set aside for any purpose.

IT IS UNDERSTOOD AND AGREED between the parties that the Lessor shall have the right to terminate said lease or to renegotiate the terms at the end of the year.

IT IS FURTHER UNDERSTOOD AND AGREED between the parties that the Lessor shall not lease the said property to any other person during the initial terms of the lease herein provided except in case of hardship or unforeseen circumstances arising which makes it impossible to continue on with the lease agreement.

IT IS UNDERSTOOD AND AGREED between the parties that this lease is subject to the terms of the Last Will and Testament left by Lynn Beus and subject to the terms of the Trust established by Lynn Beus for and on behalf of his wife, Beth Beus.

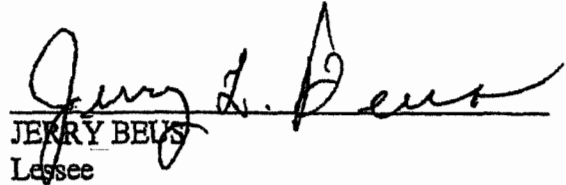
THE PARTIES HERETO AGREE that should either party default in any of the covenants or agreements contained herein that the defaulting parties shall pay to the other party all costs and expenses, including but not limited to a reasonable attorneys fee which the non-defaulting party may incur in enforcing the agreement or in obtaining the possession of the premises covered hereby or in pursuing any remedy provided hereunder by the statute of the State of Idaho whether such remedy is pursued by filing suit or otherwise.

That the provisions of this lease shall be binding upon the heirs, successors,
administrators, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day
and year first above written.



JOHN C. SOUZA
Trustee
Lessor



JERRY BELUS
Lessee

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

DALLAS BEUS, individually, DOUG)
BEUS, individually,)
) Case No.
Plaintiffs,) CV-09-1822-OC
)
vs.)
)
JOHN C. SOUZA, Trustee of the Lynn)
G. Beus Trust; JERRY BEUS,)
individually,)
)
Defendants.)

DEPOSITION OF DALLAS K. BEUS
Wednesday, July 1, 2009, 9:00 a.m.
Pocatello, Idaho

Daniel E. Williams,
RPR, CSR

EXAMINATION

DALLAS K. BEUS Page
By Mr. Smith..... 4

NO EXHIBITS

Page 3

DEPOSITION OF DALLAS K. BEUS
BE IT REMEMBERED that the deposition of
DALLAS K. BEUS was taken by the attorney for Defendant
Jerry Beus at the office of RACINE OLSON NYE BUDGE &
BAILEY, CHTD., located at 201 East Center, Pocatello,
Idaho, before Daniel E. Williams, Court Reporter and
Notary Public, in and for the State of Idaho, on
Wednesday, July 1, 2009, commencing at the hour of
9:00 a.m., in the above-entitled matter.

APPEARANCES

For the Plaintiffs:
 RACINE OLSON NYE BUDGE & BAILEY, CHTD
 BY: RANDALL C. BUDGE
 201 East Center
 Post Office Box 1391
 Pocatello, Idaho 83204-1391
 (208) 232-6101

For Defendant Jerry Beus:
HAWLEY TROXELL ENNIS & HAWLEY, LLP
BY: STEPHEN C. SMITH
877 Main Street, Suite 1000
Post Office Box 1617
Boise, Idaho 83701-1617
(208) 344-6000

Also Present:
Douglas J. Beus
Jerry Beus

1 (The deposition proceeded at 9:23 a.m. as follows:)

DALLAS K. BEUS,
produced as a witness at the instance of
Defendant Jerry Beus, having been first duly sworn,
was examined and testified as follows:

EXAMINATION

BY MR. SMITH:

Q. Mr. Beus, my name is Steve Smith, and I'm the lawyer for Jerry Beus in a lawsuit that you and your brother, Doug, have filed in the Sixth District Court here in Pocatello. It's also against John Souza. I'm hear to ask you some questions today regarding that lawsuit.

Have you ever had your deposition taken before?

A. I have not.

Q. Okay. Could you first state your full name for the record?

A. Dallas K. Beus.

Q. Okay. And what's your date of birth, sir? [REDACTED]

A.

Q. And where do you currently reside?

Page 2

Page

1 (Pages 1 to 4)

1 A. Mountain Home, Idaho.
 2 Q. And how are you employed?
 3 A. I am unemployed right now, and I work
 4 through the International Brotherhood of Electrical
 5 Workers.
 6 Q. You were here yesterday and heard your
 7 lawyer, Mr. Budge, explain how a deposition goes
 8 on.
 9 It's important -- as you could see
 10 yesterday, I'm going to ask questions out loud.
 11 You need to wait for me to finish my question, and
 12 then you can answer it.
 13 From time to time, the lawyers object
 14 to each other's questions. We've generally agreed
 15 that we'll have a stipulation that the lawyers are
 16 going to reserve speaking objections, except for
 17 form of the question.
 18 In that regard, if I ask you a
 19 question you don't understand, ask me to rephrase
 20 it or repeat it, or if necessary, we can have the
 21 court reporter read it back.
 22 If you need to take a break, let me
 23 know, and we'll go forward.
 24 A. Okay.
 25 Q. Could you describe for me your

Page 5

1 educational background, please?
 2 A. I have a high school diploma from
 3 Soda Springs High School.
 4 Q. What year was that?
 5 A. That was in 1973.
 6 Q. Okay.
 7 A. And I have an associate degree from
 8 Idaho State University, and that was in 1980.
 9 Q. And what was the subject matter?
 10 A. Civil engineering technology.
 11 Q. Okay. Anything else?
 12 A. Just what -- through my electrical
 13 apprenticeship. I'm a journeyman electrician.
 14 Q. Okay. Let's start with your work
 15 background. When did you first go to work? Well,
 16 let me strike that.
 17 Did you ever serve in the military?
 18 A. I did not.
 19 Q. Okay. Let's start with work
 20 background. When did you first go to work after
 21 high school?
 22 A. Immediately after.
 23 Q. And what did you do?
 24 A. Doing handyman work.
 25 Q. Self-employed or with an employer?

Page 6

1 A. I was pretty much self-employed.
 2 Q. And how long were you self-employed?
 3 A. For probably about three or
 4 four months. It was for a summer.
 5 Q. Okay. And then what did you do?
 6 A. I went to work for Simplot.
 7 Let me backtrack on that. I worked
 8 for my uncle, helping him harvest through the fall
 9 of that fall of '73. And then I went to work at
 10 Simplot.
 11 Q. Okay. Simplot in Pocatello?
 12 A. In Soda Springs.
 13 Q. Soda Springs, okay. What did you do
 14 there?
 15 A. Loaded railcars.
 16 Q. And how long were you -- were you in a
 17 union at that point?
 18 A. No, I wasn't.
 19 Q. And how long did you work for Simplot?
 20 A. For approximately six months.
 21 Q. Okay. And what did you do then?
 22 A. Went to work for a carpentry framer in
 23 Soda Springs, Bassett Construction.
 24 Q. As a framer?
 25 A. Uh-huh.

Page 7

1 Q. That's another thing. You have to
 2 answer "yes" or "no." You can't answer "uh-huh" or
 3 "huh-uh" --
 4 A. Yes.
 5 Q. + for the court reporter.
 6 Okay. How long were you with Bassett?
 7 A. Six months.
 8 Q. That would put us at about the end of
 9 1974?
 10 A. That would be correct.
 11 Q. Okay. What did you do then?
 12 A. I was unemployed for approximately
 13 six months.
 14 Q. Okay. And then what did you do?
 15 A. I was employed by Mark III
 16 Construction in Soda Springs for approximately
 17 one year.
 18 Q. Doing what?
 19 A. As a welder's assistant.
 20 Q. Okay. And that would take us to 1975;
 21 is that about right?
 22 A. Uh-huh.
 23 Q. Okay.
 24 A. That -- yeah.
 25 Q. If you were -- end of '74, you left

Page

2 (Pages 5 to 8)

1 Bassett. From approximately the start of '75 to
2 mid-1975, you were unemployed?
3 A. Probably till about the spring of
4 1975. And then I went to work for Mark III
5 Construction and worked until the fall of '76, and
6 then went to school at Idaho State.

7 Q. Okay. And how long was the course
8 work at Idaho State?

9 A. It was until the spring of 1980.

10 Q. So four years?

11 A. Four years.

12 Q. Okay.

13 A. I also have a certificate -- an
14 11-month certificate in drafting and design.

15 Q. Okay. In 1980, in the spring, where
16 did you go to work?

17 A. For an engineering company in
18 Pocatello, and I can't remember what their name
19 was.

20 Q. How long were you there?

21 A. Approximately, I would say, three
22 months.

23 Q. As a drafter or technician or --

24 A. Drafting and surveying.

25 Q. Okay. That would take us to early in

Page 9

1 1980?

2 A. Then I was -- went to work for an
3 engineering company in Salt Lake City for
4 two years.

5 Q. And what was that called?

6 A. I couldn't tell you.

7 Q. Okay.

8 A. I don't know.

9 Q. And what did you do in Salt Lake City?

10 A. Moved back to Pocatello.

11 Q. Well, let's go back to Salt Lake City
12 for a minute. What did you do?

13 A. Drafting and design.

14 Q. Okay. So then, in 1982, you moved
15 back to Pocatello?

16 A. Right.

17 Q. Okay. And what did you do then?

18 A. Worked for Simplot again.

19 Q. In Soda Springs or Pocatello?

20 A. Pocatello, at a potato processing
21 plant.

22 Q. And what was your job duty -- or what
23 were your job duties there?

24 A. Processing potatoes. That would be as
25 close as I could tell you.

Page 10

1 Q. You worked on the line?

2 A. Right, on the line.

3 Q. Okay. And how long were you there?

4 A. Six months.

5 Q. Okay. So that takes us to
6 approximately mid-1982; correct?

7 A. Yes, I would say that.

8 Q. Okay. In mid-1982, what did you do?

9 A. I went back to -- I went to work for

10 Forsgren Perkins Engineering.

11 Q. In Pocatello?

12 A. Yes.

13 Q. Okay. And was this someplace you had
14 been before?

15 A. No.

16 Q. Okay. And what did you do there?

17 A. Drafting and design and material
18 testing.

19 Q. What did you design?

20 A. Civil projects; mechanical, like lift
21 stations for wastewater plants; some subdivision
22 design.

23 Q. Okay. How long were you with Forsgren
24 Perkins?

25 A. Six months, I would say.

Page 11

1 Q. And what did you do then?

2 A. Let's see. What -- about --

3 Q. I think it looks like the start of
4 1983, approximately.

5 A. I worked for a roofing company for --
6 well, it was approximately six months.

7 Q. Okay.

8 A. And I was unemployed for approximately
9 six months.

10 (Jerry Beus entered the room.)

11 Q. (BY MR. SMITH) After the roofing
12 company or before the roofing company?

13 A. After.

14 Q. After, okay. And the roofing company,
15 do you recall its name?

16 A. Modern Roofing.

17 Q. In Pocatello?

18 A. Pocatello, yes.

19 Q. And then after that, unemployed for
20 six months?

21 A. Uh-huh.

22 Q. Okay. This would take us into 1984, I
23 think.

24 A. Okay. And then I moved to Wyoming.

25 Q. Okay.

Page 12

3 (Pages 9 to 12)

1 A. And I went to work for Sublette
2 Electric.
3 Q. Okay.
4 A. For approximately six months.
5 Q. Okay. Did you -- is this when you
6 began your electrical --
7 A. -- apprenticeship.
8 Q. Okay. Were you a member of the IBEW
9 at that point?
10 A. It wasn't -- it was nonunion.
11 Q. Okay. But you did begin your -- was
12 your apprenticeship through Sublette, or through
13 the IBEW?
14 A. It started with Sublette.
15 Q. Okay. So how long were you an
16 apprentice at Sublette?
17 A. I'd say about six months.
18 Q. Okay.
19 MR. BUDGE: Let's stop for a second.
20 MR. SMITH: We'll take a quick break.
21 (A recess was taken from 9:37 a.m. to
22 9:44 a.m.)
23 Q. (BY MR. SMITH) Okay. We are in 1984.
24 You worked for Sublette Electric as an apprentice
25 for six months?

Page 13

1 A. Yes.
2 Q. Okay. Then what did you do?
3 A. I was unemployed for about six months,
4 went to work for Modern Electric for approximately
5 a year as an electrical apprentice.
6 Q. And where was Modern Electric?
7 A. It was in Evanston, Wyoming.
8 Q. Okay. Was that IBEW?
9 A. No, it was not.
10 Q. Okay. And how long with Modern?
11 A. For approximately 12 months.
12 Q. Okay. And you said you moved to
13 Wyoming. Where did you live?
14 A. I lived in Kemmerer.
15 Q. Okay. That takes us to about the
16 start of 1986, I think.
17 A. Went to work for Elkhorn Construction.
18 Q. Okay. And where were they located?
19 A. Evanston, Wyoming.
20 Q. As an electrician apprentice?
21 A. Yes.
22 Q. And how long with Elkhorn?
23 A. It wasn't consistent. There was a few
24 times of being laid off. But until, I would say,
25 the spring of 1989.

Page 14

1 Q. This also was nonunion?
2 A. Yes.
3 Q. Okay. The spring of 1989?
4 A. I moved to Nampa, Idaho.
5 Q. Okay.
6 A. Went to work for Boise Basin Electric.
7 Q. Okay.
8 A. For 12 months.
9 Q. Okay. Apprentice or journeyman?
10 A. Journeyman, nonunion.
11 Q. Okay. After the spring of --
12 A. Then I went to work for Rocky Mountain
13 Electric.
14 Q. Okay.
15 A. For 12 months, nonunion.
16 Q. Also in Nampa?
17 A. Yes.
18 Q. Okay. Also a journeyman; right?
19 A. Yes.
20 Q. Okay.
21 A. I then moved to Lyman, Wyoming.
22 Q. What year are we up to now, about
23 1991?
24 A. 1991.
25 Q. Okay.

Page 15

1 A. Worked for Modern Lighting & Electric.
2 Q. Is that a different operation than
3 Modern --
4 A. I don't believe so. I believe it was
5 the same company.
6 Q. Okay. Journeyman, nonunion?
7 A. Yes.
8 Q. Okay.
9 A. I worked for them for two years.
10 Q. Okay.
11 A. As a journeyman electrician, nonunion.
12 Q. That would take us to 1993. What
13 happened then?
14 A. I went to work for -- we moved -- I
15 moved back to Mountain Home, Idaho -- or moved to
16 Mountain Home, Idaho.
17 Q. Okay.
18 A. And worked for approximately
19 six months for Master Electric as a journeyman
20 electrician.
21 Q. You said Masterson?
22 A. Master Electric.
23 Q. Master Electric, okay.
24 A. And then went to work for -- do you
25 have a time length on that?

Page 1

1 Q. You have six months.
 2 A. Yes. And then I went to work for
 3 Rocky Mountain Electric again.
 4 Q. Okay.
 5 A. And worked for approximately
 6 six months for them.
 7 Q. That would put us at about 1994?
 8 A. 1994.
 9 Q. And the same Rocky Mountain you worked
 10 for previously?
 11 A. Yes.
 12 Q. And journeyman, nonunion?
 13 A. Yes.
 14 Q. Okay.
 15 A. I was then organized into the
 16 International Brotherhood of Electrical Workers.
 17 Q. While you were working for Rocky
 18 Mountain or --
 19 A. No.
 20 Q. Okay.
 21 A. And I went to work for Alloway
 22 Electric.
 23 Q. Okay.
 24 A. Until July of 19' -- or of 2008.
 25 Excuse me.

Page 17

1 Q. So you worked for Alloway from
 2 mid-1994 to July of 2008 --
 3 A. Yes.
 4 Q. -- through the union?
 5 A. Yes.
 6 Q. Okay. IBEW?
 7 A. Local 291.
 8 Q. Right. Journeyman; right?
 9 A. Yes.
 10 Q. When you went into IBEW, did you go
 11 straight in as a journeyman --
 12 A. Yes.
 13 Q. -- or did you have to serve as an
 14 apprentice?
 15 A. No. I went in as a journeyman.
 16 Q. Okay. And you remained employed only
 17 at Alloway through July of 2008?
 18 A. Right.
 19 Q. Okay.
 20 A. Then I was -- went to work for Romar
 21 Electric.
 22 Q. Okay.
 23 A. Until February of 2009.
 24 Q. Were you laid off at Alloway?
 25 A. Yes.

Page 18

1 Q. Okay.
 2 A. And I have been unemployed since then.
 3 Q. Were you laid off at Romar?
 4 A. Yes, I was.
 5 Q. Okay. Now, are you fairly senior at
 6 IBEW 291?
 7 A. There's -- seniority is not really
 8 something that would be valid. You're on the books
 9 there.
 10 Q. Okay. You can't bump people who are
 11 less senior than you?
 12 A. No. They don't -- they don't -- I
 13 don't know that they do that.
 14 Q. Okay. Now, let's turn to the subject
 15 matter of this lawsuit. You know it involves your
 16 father's ranch at Soda; correct?
 17 A. Correct.
 18 Q. Anytime from your graduation from high
 19 school in 1973 up until today, have you ever worked
 20 on the ranch?
 21 A. In 1980, in the fall, for
 22 approximately two months.
 23 Q. Okay. And what did you do then?
 24 A. Helped with harvest.
 25 Q. Do you recall what was being

Page 19

1 harvested?
 2 A. Barley and wheat, as closely as I can
 3 remember.
 4 Q. And what did you do?
 5 A. Operated a harvesting machine.
 6 Q. Okay. Any other work, other than the
 7 two months in 1980?
 8 A. Not that I can recall.
 9 Q. Okay. How often did you return to the
 10 ranch from the -- strike that.
 11 Up until 1973, your graduation from
 12 high school, did you live on the ranch?
 13 A. I did.
 14 Q. Okay. And then after 1973, how long
 15 did you live at the ranch, if at all?
 16 A. For approximately six months in '74
 17 and '75, in the winter.
 18 Q. Okay. Other than that six months in
 19 '74 and '75, any other periods of time where you
 20 lived at the ranch?
 21 A. No.
 22 Q. Okay. Now, how often would you go
 23 back and visit the ranch when you were not living
 24 there?
 25 A. Well, I did not feel welcome there, so

Page 20

5 (Pages 17 to 20,

1 I did not return there to spend any time.
 2 Q. Okay. Let's talk about that for a
 3 minute. When did you start feeling unwelcome at
 4 the ranch?
 5 A. Approximately when my sibling,
 6 Jerry Beus, was -- began operations on it.
 7 Q. Okay. In what way did you not feel
 8 welcome?
 9 A. I don't know. There's not very many
 10 ways you can feel not welcome, other than I did not
 11 feel welcome there.
 12 Q. Okay. Well, did Jerry Beus say
 13 something to you? Or tell me what happened that
 14 has you describing it as not feeling welcome.
 15 A. I would say it relates back to our
 16 childhood.
 17 Q. Is what you're trying to tell me is,
 18 as children, Jerry Beus and you did not get along?
 19 A. No.
 20 Q. Okay. So you've had problems with
 21 your brother since you were a child?
 22 A. To my recollection, yes.
 23 Q. Okay. As a result of those problems
 24 as a child -- or problems with Jerry Beus during
 25 your childhood, you had this feeling that you were

Page 21

1 A. Yes.
 2 Q. Okay. And that's where your father
 3 and stepmother lived?
 4 A. Yes.
 5 Q. Okay. Let me ask this: When did your
 6 father and mother divorce?
 7 A. Which mother?
 8 Q. Well, your natural mother and your
 9 natural father -- well, strike that.
 10 Let me ask this: Who's your natural
 11 mother?
 12 A. Marjorie Ayers.
 13 Q. Okay. Recently known --
 14 Marjorie Seely is her current name; right?
 15 A. Correct.
 16 Q. Okay. And your father is Lynn Beus;
 17 correct?
 18 A. Correct.
 19 Q. And at some point, Marjorie Seely and
 20 Lynn Beus were married to each other; correct?
 21 A. Correct.
 22 Q. Okay. When did they divorce?
 23 A. I researched the records and was not
 24 able to confirm an exact date. My guess would be
 25 1955.

Page 23

1 not welcome on the ranch; is that correct?
 2 A. Well, as an older sibling, he
 3 established his authority quite early on, so I did
 4 not feel comfortable being around him on the ranch.
 5 Q. Okay. Now, for a period of time after
 6 1973, your father and stepmother were still on the
 7 ranch; correct?
 8 A. That's correct, for a short time.
 9 Q. Okay. When were they -- when did they
 10 leave the ranch?
 11 A. The closest I can recall is 1975.
 12 Q. And where did they go?
 13 A. To the Enders Hotel.
 14 Q. Now, how many homes exist on the ranch
 15 property?
 16 A. Two.
 17 Q. Okay.
 18 A. There was three. There was an old --
 19 actually, there was an older bunkhouse, but I don't
 20 know whether you'd want to classify it as a livable
 21 residence.
 22 Q. Okay. So there were two residences on
 23 the property; correct -- livable residences?
 24 A. Right.
 25 Q. And you grew up in one of them?

Page 22

1 Q. And that would be when you and your
 2 brother were infants; correct?
 3 A. Approximately one year old.
 4 Q. Okay. Where or by whom were you
 5 raised?
 6 A. By my father.
 7 Q. Okay.
 8 A. And stepmother.
 9 Q. Beth Beus?
 10 A. Correct.
 11 Q. Okay. And were you raised at the
 12 ranch?
 13 A. Yes.
 14 Q. Okay. Was your brother, Jerry, also
 15 raised by your father and stepmother?
 16 A. Correct.
 17 Q. Okay. During your childhood and young
 18 adulthood, did you also have contact with your
 19 mother?
 20 A. Yes.
 21 Q. Okay. She was still in the area?
 22 A. Somewhat. She moved around quite a
 23 bit.
 24 Q. Okay. But, basically, you and your
 25 two brothers grew up on the ranch with your father

Page 2

1 and stepmother --
 2 A. Yes.
 3 Q. -- in the family unit; right?
 4 A. Yes.
 5 Q. Okay.
 6 A. With my older sister and two
 7 stepsisters.
 8 Q. So on the ranch, there were five
 9 children?
 10 A. Yes.
 11 Q. Okay.
 12 A. No. I take that back. There should
 13 be six.
 14 Q. You're right, six. I miscounted
 15 there.
 16 Okay. So starting in approximately
 17 1975, when your stepmother and your father moved to
 18 the Enders Hotel, that's when your brother, Jerry,
 19 began operating the ranch; correct?
 20 A. Correct.
 21 Q. Okay. Now, did your father continue
 22 to work on the ranch at that time?
 23 A. Very minimally, if he did. He was not
 24 in the best of health.
 25 Q. When did your father's health begin to

Page 25

1 brother began when you were in -- when you were at
 2 the ranch. Did they begin prior to him leaving for
 3 Vietnam or after he came back?
 4 A. Prior.
 5 Q. Okay. Now, I want you to tell me,
 6 in -- strike that.
 7 Let me ask it this way: You basically
 8 stopped going to the ranch in approximately 1975;
 9 is that correct?
 10 A. Approximately.
 11 Q. Okay. Since 1975, how often, if at
 12 all, did you go back to the ranch, up to today?
 13 A. Rarely.
 14 Q. Okay. How often did you come to
 15 Soda Springs to visit either your father or
 16 stepmother?
 17 A. I'd say six times a year.
 18 Q. And during those time periods, you did
 19 not go to the ranch, I take it?
 20 A. No, not that I can recall.
 21 Q. What I'd like you to do now, sir, is
 22 describe for me what the ranch is like. What does
 23 it look like? What's it do? Where is it located?
 24 A. It is located approximately 5 miles
 25 south and east from Soda Springs, located at the

Page 27

1 decline? What year?
 2 A. I would say possibly in -- around
 3 1970 --
 4 Q. Okay.
 5 A. -- he began to decline.
 6 Q. Okay. I want to go back to the
 7 houses. After your parents lived -- or left for
 8 the Enders Hotel in Soda, who lived in the houses
 9 on the ranch?
 10 A. The houses?
 11 Q. Yeah. You said there were two houses
 12 on the ranch?
 13 A. Uh-huh.
 14 Q. And you said your father and
 15 stepmother, in approximately 1975, moved to the
 16 Enders Hotel?
 17 A. Correct.
 18 Q. Okay. What I'd like to know is, after
 19 that occurred, who lived in the houses on the
 20 ranch? You said there were two houses. What I'm
 21 trying to find out is, who lived in them?
 22 A. To the best of my recollection, Jerry
 23 lived in one of them and renters in the other one.
 24 Q. Okay. Just very briefly, I want to go
 25 back to -- you said your problems with your older

Page 26

1 mouth of Wood Canyon, surrounded by mountainous
 2 hills. It's a very beautiful place, I believe. It
 3 has a pond on it. It had a creek running through
 4 it, a creek running into the mouth of it from the
 5 canyon, lots of pine trees and wildlife.
 6 Q. What is your understanding of the
 7 farming and ranching operation that's gone on, you
 8 know, with your father, with your brother?
 9 A. My father was a farmer in that he
 10 raised grains, wheat, barley, and alfalfa, clover
 11 for the livestock. He -- my father also had a
 12 sheep operation that he'd run approximately 1,500,
 13 2,000 sheep for the most part of my adolescence,
 14 anyway.
 15 Jerry has been -- has raised wheat and
 16 barley and some alfalfa for livestock. It has been
 17 irrigated and dry farmed.
 18 Q. Now, did you ever -- did you work with
 19 your father during your childhood?
 20 A. Yes.
 21 Q. Okay. And how often did you work?
 22 A. Every day.
 23 Q. Okay. Did there come a time when you
 24 stopped working with him?
 25 A. Yes, probably in seventy -- in the

Page 27

7 (Pages 25 to 28)

1 spring of 1973. We graduated, and my stepmother
2 told us we were to leave and get jobs elsewhere.
3 Q. Your stepmother, did she kick you out
4 of the house or just tell you that you were no
5 longer welcome or encourage you to go out and get
6 jobs?
7 A. She said we were to be out.
8 Q. And when you say "we," you mean both
9 you and your brother, Doug?
10 A. Yes.
11 Q. Okay. Did she give you a rationale
12 for her decision?
13 A. She thought it was time that we
14 learned how to make our own way in the world.
15 Q. Were you ever encouraged, after that
16 time, to work on the farm?
17 A. Not that I can recall.
18 Q. Okay. So since the spring of 1973,
19 except for the one time that you've mentioned
20 helping with the harvest in approximately 1980, you
21 haven't been involved at all in the operation of
22 the family property --
23 A. No.
24 Q. -- is that correct?
25 A. No.

Page 29

1 Q. Okay.
2 A. It was never -- the opportunity never
3 availed itself, and I never made use of it if there
4 was one.
5 Q. Okay. Did you ever ask anybody for
6 the opportunity to come back and work on the farm
7 again?
8 A. Not that I can recall.
9 Q. Okay. Do you know who the Hopkins and
10 Christman families are?
11 A. I do.
12 Q. Who are they?
13 A. They were actually -- the one, the
14 Hopkins was a relation of ours on the Beus side.
15 And the other was one of their family relations, I
16 believe, and also a farming corporation or farming
17 company, however you want to put it, a partnership.
18 Q. And they've been in Soda for a long
19 time?
20 A. Probably -- yeah. I couldn't tell
21 you, but it was my lifetime, for the duration of my
22 lifetime.
23 Q. Okay. During the time period from the
24 spring of 1973 until today, do you know what, if
25 any, improvements have been made to the farm by

Page 30

1 your brother, Jerry?
2 A. The only improvements I'm aware of is
3 some irrigation main line.
4 Q. Okay. Where was the irrigation main
5 line laid?
6 A. Adjacent to the pond and at the mouth
7 of Wood Canyon.
8 Q. Okay. Anything else?
9 A. No.
10 Q. Okay. Now, what efforts have you
11 taken over that period of time, from 1973 to 2009,
12 to determine if there have been any other
13 improvements made on the property?
14 A. None.
15 Q. Okay. So sitting here today, you
16 don't know whether or not there's been anything
17 else done to the property in that period of time;
18 correct?
19 A. "Done" as in what specifically?
20 Q. Well, as in improvements to the
21 property from the state it was in, in the spring of
22 1973, when you departed, and today. What I'm
23 trying to find out is whether you've done anything,
24 besides talked to your lawyer -- and I don't want
25 to hear about that, but if you've done any of your

Page 31

1 own inquiries or investigation as to what
2 improvements have been made on the property,
3 besides the main line?
4 (Douglas Beus exited the room.)
5 THE WITNESS: Yes. I've looked at it.
6 Q. (BY MR. SMITH) Okay.
7 A. And checked it out, not -- I
8 haven't -- like I say, I didn't really feel welcome
9 there, so I haven't went on the property as such.
10 Q. When you looked at it, did you drive
11 around it, or how did you --
12 A. Drove around it on the Wood Canyon
13 Road.
14 Q. Okay. But you haven't actually gone
15 on the property?
16 A. I did once, yes.
17 Q. Once, okay.
18 A. Yeah. I went down into the yard by
19 the buildings to take a look at it.
20 Q. And when was that?
21 A. May of 2009.
22 Q. Okay. But between the spring of 1973
23 and May of 2009, is it your testimony you haven't
24 been on the ranch physically?
25 A. I have one other time, I believe, yes.

Page 32

8 (Pages 29 to 32,

1 Q. Okay. And when was that?
 2 A. 1988, as best as I can recall.
 3 Q. Okay. And what was that occasion?
 4 A. Doug and I took some horses on there
 5 and rode around through the property and some of
 6 the adjacent mountains.
 7 Q. During that visit, did you happen to
 8 take any notice of any improvements made on the
 9 property?
 10 A. No.
 11 Q. Okay.
 12 A. And specifically what are you
 13 referring to as "improvements"?
 14 (Douglas Beus entered the room.)
 15 Q. (BY MR. SMITH) Well, what I'm trying
 16 to find out is anything that has been done to the
 17 property from the spring of 1973 until May of 2009
 18 that have either increased the ranch or farm
 19 operation's value -- irrigation piping, dams,
 20 additional irrigated acres -- any type of work that
 21 would be done in the course of a farming and
 22 ranching business. It's a wide variety -- a long
 23 list of things that farmers and ranchers do.
 24 A. Right.
 25 Q. And what I'm just trying to find out

Page 33

1 is any knowledge you have of any of those things
 2 that have occurred over the last 30-some-odd years,
 3 if anything.
 4 A. As I said before, the -- what I've
 5 seen that I would recognize as improvements are the
 6 irrigation main lines.
 7 Q. Okay. And what I'm also trying to
 8 find out is how many times you've been there to
 9 look, and you've told me once to ride horses in the
 10 1980s and once in May of 2009, and that's it on the
 11 property?
 12 A. As I recall right now, that's it.
 13 Q. Okay. And there may have been some
 14 other times when you drove around the property on
 15 the Wood Canyon Road?
 16 A. Yes.
 17 Q. Okay.
 18 A. Many times on that. And it is a
 19 fairly visible operation from the road.
 20 Q. Okay. And I'm correct that in that
 21 interim, between 1973 and 2009, you haven't gone to
 22 your brother Jerry and asked, "Gee, what have you
 23 done to the ranch?" or anything of that nature?
 24 A. I have not.
 25 Q. Okay. Let me ask this: How many

Page 34

1 times have you even talked to your brother, Jerry,
 2 since 1973?
 3 A. Maybe 20.
 4 Q. Okay. And during those 20 times, have
 5 any of those decisions -- or excuse me, have any of
 6 those conversations ever involved the ranch itself?
 7 A. Not in-depth.
 8 Q. Okay.
 9 A. Not into the business operational end
 10 of it to any depth.
 11 Q. Okay. So, roughly speaking, you've
 12 talked to your brother a little more than once a
 13 year over the last 34 years on the average?
 14 A. On the average, I would say so.
 15 Q. Okay. And none of those conversations
 16 involved an in-depth discussion of the business or
 17 ranching operation?
 18 A. No.
 19 Q. Okay.
 20 A. Not that I can recall.
 21 Q. Let me ask this: Do you know whether
 22 or not your brother, Doug, has had any more contact
 23 with Jerry than you have?
 24 A. Yes, he has.
 25 Q. Well, I'll ask him all these questions

Page 35

1 in a little while, but do you know whether he has
 2 ever had discussions with Jerry about the business
 3 operation of the ranch?
 4 A. I don't.
 5 Q. Do you know whether or not he has been
 6 physically present on the ranch more than twice in
 7 the last 34 years?
 8 A. I don't.
 9 Q. Okay. Now, do you know who these
 10 renters -- strike that.
 11 Let me ask this: I take it Jerry has
 12 lived in one of the houses since he -- continuously
 13 since approximately 1970; is that your
 14 understanding?
 15 A. That would be my understanding.
 16 Q. Okay. At any time, did anyone else
 17 with your family live in the other house, from 1970
 18 to 2009?
 19 A. Yes.
 20 Q. Okay. And who would that be?
 21 A. My parents and myself and Doug.
 22 Q. Okay. After you left -- let's move it
 23 up. After your parents moved to the Enders Hotel
 24 and after you left in 1973, did anybody else from
 25 your family live in one of the houses on the

Page -

1 property?
 2 A. Occasionally, my parents did for a
 3 couple of years, as best as I can recall, along
 4 with my stepsister and her child.
 5 Q. Okay. Anybody else?
 6 A. Not that I can recall.
 7 Q. Now, when your parents lived there,
 8 did you go visit them at this house?
 9 A. Occasionally.
 10 Q. Okay. Is that house on the ranch
 11 property?
 12 A. Yes, it is. It's the main -- what I
 13 would call the main ranch house.
 14 Q. Okay. And just so I'm clear, so in
 15 addition to the two times you remember, there may
 16 be times when you went to visit your parents --
 17 A. Right.
 18 Q. -- at the main ranch house?
 19 A. Right.
 20 Q. Okay. Do you recall how many times
 21 that was?
 22 A. I do not.
 23 Q. Okay. When you went to visit your
 24 parents at the main ranch house, did you ever go
 25 look at the operations of the actual farming and

Page 37

1 ranching operation?
 2 A. I did -- I would, as far as walking
 3 around and looking at what was there, but to
 4 analyze it through a business sense, I didn't do
 5 that, no.
 6 Q. So is it safe to say you didn't at any
 7 time wander around, look, and say, "Huh, Jerry put
 8 in windbreaks," or "Jerry put in a new pond," or
 9 "Jerry put in new ditches," anything of that
 10 nature?
 11 A. I do not recall seeing anything of
 12 that nature.
 13 Q. Okay. Do you recall seeing anything
 14 that looked like the property had been cleaned up
 15 from when your father had it to the time when you
 16 came back to visit?
 17 A. What I recall seeing is Jerry tearing
 18 out the natural trees that were there and planting
 19 some other trees in their place.
 20 Q. Okay. And when was this?
 21 A. To the best of my recollection, I
 22 would say from the mid-'80s to the mid-'90s.
 23 Q. Okay. And what sort of trees were
 24 torn out?
 25 A. Quaking aspen.

Page 38

1 Q. And what sort of trees were they
 2 replaced with?
 3 A. I don't know.
 4 Q. Okay. And do you know why the aspen
 5 were taken out and replaced with something else?
 6 A. No, I do not. And I would not have
 7 been in agreement with it.
 8 Q. Okay. But you don't know -- sitting
 9 here today, you don't know why the aspen were taken
 10 out and something else were put in?
 11 A. I do not.
 12 Q. Okay.
 13 A. I see no reason to have done it.
 14 Q. Did you ever ask your brother why he
 15 had done it?
 16 A. I did not.
 17 Q. Okay. When you went on these visits
 18 to see your parents, did you even ever talk to
 19 Jerry?
 20 A. Maybe in passing.
 21 Q. Okay. But no in-depth discussions
 22 about anything, correct?
 23 A. Not to my recollection.
 24 Q. Okay. Now, prior to -- let me ask
 25 this again -- or make sure I understand it. Your

Page 39

1 father essentially stopped his work on the ranch in
 2 1970?
 3 A. No. He was still working. His health
 4 wasn't real good at that point. He was -- he had
 5 worked very hard his whole life and was just not up
 6 to the task of taking care of the operation at the
 7 scale it needed to be in. He was trying to. So he
 8 was just not in the best of health.
 9 And he had worked at a phosphate plant
 10 that had damaged his lungs, and he had smoked over
 11 his lifetime. And his general ability to keep up
 12 with the work was declining, partly due to age and
 13 some of these other aspects, some of these other
 14 reasons.
 15 Q. Okay. Can you give me an idea of
 16 approximately when your father transferred primary
 17 responsibility for running the ranch from himself
 18 to Jerry?
 19 A. I would say either 1975 or 1976.
 20 Q. Okay. Now, do you know, in 1975, how
 21 much of the farm was irrigated and -- or how many
 22 acres of the farm was irrigated and -- strike that.
 23 Let me re-ask it this way: When your
 24 father transferred primary responsibility for
 25 operating the ranch to Jerry in 1975 or 1976, how

Page

10 (Pages 37 to 40)

1 many acres of the ranch were irrigated?
 2 A. I don't know.
 3 Q. Okay.
 4 A. Not without seeing a map.
 5 Q. Okay. Is that something, that over
 6 the course of the past 34 years or so, that you
 7 paid any attention to, how many acres have been
 8 irrigated?
 9 A. No, I can't say that I have. I have
 10 seen it expand some.
 11 Q. Okay. How would you describe, in 1975
 12 and 1976, the overall condition of the ranch?
 13 A. I would say fair.
 14 Q. Okay. And what do you mean by that?
 15 A. It was still being planted, crops
 16 being harvested. It wasn't obvious to me that
 17 there was any damage that had been done due to
 18 neglect.
 19 Q. Was it worn or was it -- was it
 20 suffering as a result of your father's health
 21 problems?
 22 A. It had some.
 23 Q. Okay. Now, you were last on the ranch
 24 for any length of time in May of 2009; correct?
 25 A. Right.

Page 41

1 Q. Okay. What sort of shape is the ranch
 2 in today?
 3 A. The buildings and the outbuildings, I
 4 would say, are run down. The ranch houses and the
 5 buildings -- the shop buildings are run down. And
 6 the land, I believe due to being leased out, is
 7 looking good.
 8 Q. What do you mean, "due to being leased
 9 out"?
 10 A. The lessees that are taking care of it
 11 now have the machinery and the capabilities to farm
 12 it as it should be farmed.
 13 Q. I take it from your answer, you don't
 14 think your brother had anything to do with that; is
 15 that correct?
 16 A. Other than the irrigation, no.
 17 Q. So in the last 34 years, the only
 18 thing that Jerry has added to the value of this
 19 property is the irrigation system; is that correct?
 20 A. I would say that is correct.
 21 Q. Okay. And I also take it, then, that
 22 you believe that the -- let me strike that.
 23 Do you have any idea of what the
 24 property was worth in 1975?
 25 A. I do not.

Page 42

1 Q. Okay. But you do know, don't you,
 2 that now, according to at least one appraiser, it's
 3 worth \$2.9 million; correct?
 4 A. That is correct.
 5 Q. Okay. And you also would agree with
 6 me, wouldn't you, that in 1975, it probably wasn't
 7 worth 2.9 million, was it?
 8 A. I do not know.
 9 Q. Okay. But as far as you know sitting
 10 here today, the only value added between 1975 and
 11 '76 and 2009 by your brother, Jerry, was the
 12 irrigation system?
 13 A. That is correct.
 14 Q. Okay.
 15 THE REPORTER: Do you mind if we take a
 16 quick comfort break?
 17 MR. SMITH: No, I don't mind at all.
 18 That's fine.
 19 (A recess was taken from 10:39 a.m. to
 20 11:05 a.m.)
 21 MR. SMITH: Okay. Back on the record.
 22 Q. (BY MR. SMITH) I forgot to ask you a
 23 couple of questions I wanted to.
 24 Are you married?
 25 A. Yes, I am.

Page 43

1 Q. Okay. And what's your wife's name?
 2 A. Jennifer.
 3 Q. Okay. Do you have children?
 4 A. I do.
 5 Q. And how many?
 6 A. Four.
 7 Q. Okay. And what ages?
 8 A. One is 26, one is 16, 13, and 6.
 9 Q. Okay. Have you ever taken your
 10 children to visit -- let's strike that.
 11 Let me ask it this way: Did you ever
 12 take your children to visit their grandparents on
 13 the ranch?
 14 A. No.
 15 Q. Okay.
 16 A. No.
 17 Q. So, to the best of your knowledge,
 18 your four children have never been on the ranch?
 19 A. They have went out and visited with
 20 Jerry on, I believe, 2002, around the holiday
 21 season.
 22 Q. You went and visited Jerry?
 23 A. I did. We did as a family.
 24 Q. Okay. And how many of your children
 25 went with you? All of them?

Page 44

11 (Pages 41 to 44,

1 A. Let's see. No. The little boy hadn't
2 been born yet.
3 Q. Okay.
4 A. And the older one wasn't there. She's
5 been -- I've been estranged from her for -- since
6 about 1984.
7 Q. Okay. So the 26-year-old is a
8 daughter --
9 A. Yes.
10 Q. -- from whom you've been estranged
11 since '84?
12 I take it Jennifer is not her mother?
13 A. No.
14 Q. Okay. And, to your knowledge, have
15 you ever taken her -- what is her name?
16 A. Jennifer.
17 Q. The daughter?
18 A. Uh-huh.
19 Q. Okay. Have you ever taken Jennifer,
20 your daughter, to the ranch?
21 A. I believe I could have in the fall of
22 1980, I believe.
23 Q. Okay. Now, the two -- so when you
24 went to the ranch to visit Jerry at the holidays in
25 2002, you took the 16-year-old and the 13-year-old?

Page 45

1 went hunting with him in the fall of 1979 and, I
2 believe, the fall of 1982.
3 Q. Okay. So was it deer hunting or --
4 A. Yes.
5 Q. -- elk hunting?
6 A. Deer.
7 Q. And both on the -- on your property up
8 in the mountains?
9 A. Yes, I would say so.
10 Q. Okay.
11 A. Well, no. No, one wasn't. One was
12 somewhere I can't remember. But one was on the
13 ranch.
14 Q. Okay. Now, you remember we talked a
15 little bit about -- or I think you testified, that
16 in your visit of May of 2009, that the outbuildings
17 were in -- you said in bad shape? You said they
18 were run down?
19 A. Well, run down. I mean, they're not
20 state of the art by any means.
21 Q. Okay.
22 A. They're -- you know, they were -- they
23 were built, I would say, in the '50s -- '40s and
24 '50s. And these are the same buildings.
25 Q. Okay.

Page 47

1 A. Right.
2 Q. Okay. Were you married to your wife,
3 Jennifer, at that time?
4 A. Yes.
5 Q. Okay.
6 A. I married her in 1989.
7 Q. Okay. So it was the -- the four of
8 you went to the ranch at the holidays to visit
9 Jerry?
10 A. Yes.
11 Q. Okay. And where did you stay during
12 that time period? At the ranch?
13 A. With my mother.
14 Q. Okay.
15 (Ferrell Ryan entered the room.)
16 Q. (BY MR. SMITH) Okay. So I just want
17 to be clear. So this would be -- is this one of
18 the two times you've been to the ranch, or is this
19 a third time? Because I think we had talked --
20 A. Well, you're talking over, you know, a
21 lot of years.
22 Q. Right.
23 A. And there is probably some other
24 possibilities of some visits working in there. I
25 know I visited him in 2002. And then I had a --

Page 46

1 A. And I'd like to correct or add that
2 Jerry has done some cleanup on there since my
3 dad -- since he took over from my father. Some of
4 the buildings and fences and stuff that were left,
5 he did clean up and get a fair amount of them that
6 were nonusable and run down to the point that they
7 couldn't be usable out up there.
8 Q. Okay. Is it a fair statement to say
9 that at the end of your father's work life on the
10 ranch, because of his physical condition, he was
11 having difficulty, like anyone would have, given
12 how you described his work life, of keeping up with
13 routine maintenance, garbage, weeds, fences, things
14 of that nature?
15 A. Yes.
16 Q. Okay. Now, did he have any farm
17 workers or ranch hands?
18 A. He did.
19 Q. Okay. And since Jerry took over, your
20 testimony is now, that in addition to the
21 irrigation system, there's also been cleanup of
22 buildings and fences and things of that nature?
23 A. Yes.
24 Q. Okay.
25 A. I would also like to add we just had

Page 4

12 (Pages 45 to 48)

1 about a 20-minute break, where you can sort of
2 decompress and let your memories come back without
3 feeling like you're under pressure.

4 Q. Yeah. And anytime -- you know, as
5 often happens in a deposition, when questions are
6 asked, if you do remember -- something springs into
7 your mind of a question that I've asked before, go
8 ahead and say, "Look, I just remembered something."

9 A. Okay.

10 Q. It's a very common --

11 A. Yeah.

12 Q. It's a very common thing that happens
13 in depositions.

14 And as your attorney has probably told
15 you, at the end of the deposition, you will have
16 the opportunity to read it and make corrections or
17 additions as -- if you say something.

18 Now, you should realize that if you do
19 make a change later, I have the opportunity to
20 comment on that to a judge or jury down the road
21 sometime. But you are allowed to do that.

22 A. Okay.

23 Q. And sometimes I forget to tell you
24 things at the start of the deposition like that,
25 so --

Page 49

1 Q. Okay. You just said there were a lot
2 of factors.

3 A. There are a lot of factors.

4 Q. Why don't you tell me what those are?

5 A. What the market is right now.

6 Q. Okay. What else?

7 A. How this is resolved -- how it's
8 resolved.

9 Q. Okay. Anything else?

10 A. No.

11 Q. Okay. And, additionally, you want to
12 get what you were willed?

13 A. Yes.

14 Q. Okay. And I take it, because you've
15 filed this lawsuit, you don't want to operate the
16 ranch yourself?

17 A. I do not.

18 Q. Okay. Is it -- well, let me ask this:

19 If this were -- if you were provided, one way or
20 another, the value that you were willed by your
21 father, do you care, one way or another, whether
22 Jerry would continue to operate the ranch?

23 A. No. I have no problems with him
24 keeping the ranch, as long as it is resolved fairly
25 and as quickly as reasonably possible.

Page 51

1 A. Uh-huh.

2 Q. Now, did you ever have a conversation
3 that involved your father, Jerry, and Doug about
4 taking over -- you personally taking over
5 operations of the ranch?

6 A. Not that I can recall.

7 Q. Do you recall Doug ever mentioning to
8 you that he had been offered the opportunity to
9 take over the ranch?

10 A. Not that I know of.

11 Q. Okay. Did you ever ask Jerry or your
12 father that you would like to get involved with the
13 actual operation of the ranch?

14 A. Not that I can recall.

15 Q. Now, what personally do you want? I
16 mean, I assume, because you've filed this lawsuit,
17 you just want to sell it and be done with it. Is
18 that a fair statement of your -- what you'd like to
19 have done with this property?

20 A. I would like to get what is legally
21 mine through the will. I am in no rush to see it
22 sold. That would be -- there's a lot of factors
23 involved in it, but I personally want to see this
24 resolved legally and to receive what my father
25 willed me.

Page 50

1 Q. Now, yesterday you were here when
2 there was quite a bit of talk about mortgages and
3 things of that nature that have been or are on the
4 ranch. I want to go back and see what your
5 knowledge is, going back to when your father
6 operated the ranch.

7 Do you remember Mr. Budge asked Jerry
8 a number of questions and alluded to the fact that
9 Caribou Title showed that there were no mortgages
10 on the ranch in approximately 1975, and my client
11 testified that his understanding is he believes he
12 paid a Federal Land Bank mortgage?

13 What I am interested in is your
14 recollection and understanding of whether or not
15 there was a mortgage on the property put in place
16 by your father in the 1970s?

17 A. I don't believe that mortgage was put
18 in place in the 1970s. To my recollection, it was
19 put in place in the 1960s, when my father acquired
20 his brother's half of the ranch.

21 Q. Okay. And was that a Federal Land
22 Bank mortgage?

23 A. Yes, it was, to my recollection.

24 Q. Okay. Do you recall how much the
25 mortgage was for?

Page 51

1 A. I do not.
 2 Q. Okay. Was it still in place, to your
 3 knowledge, in the 1970s, when Jerry took over from
 4 your father?
 5 A. To my recollection, it was.
 6 Q. Do you know who did your father's
 7 financial dealings? Like, did he have an
 8 accountant or a CPA or a bookkeeper?
 9 A. I can't recall one.
 10 Q. Okay.
 11 A. I would think he did, but I don't
 12 know.
 13 Q. Now, you said -- I want to go back and
 14 talk a little bit more about your father for just a
 15 second and get a feeling for -- you said that he --
 16 in approximately 1975, he became quite ill; is that
 17 correct?
 18 A. No. It was a gradual deterioration.
 19 He was just losing steam over time.
 20 Q. Okay. What year did he pass away?
 21 A. 1986.
 22 Q. Okay. When did he -- was it in 1975
 23 that he stopped full-time work on the ranch?
 24 A. To my recollection, approximately
 25 1975.

Page 53

1 A. -- Utah, but...
 2 Q. Yeah.
 3 Okay. Were you ever involved in
 4 taking him to Logan?
 5 A. No.
 6 Q. Okay. Now, when he passed away, was
 7 he still in Soda?
 8 A. No. He was in Logan.
 9 Q. Okay. When did he move to Logan?
 10 A. He did not move to Logan. He would
 11 commute there to go to the doctor when he --
 12 Q. Okay.
 13 A. When something specific -- he had, I
 14 think, some specialized physicians there that he
 15 would get treatment from.
 16 Q. Okay. When he passed away -- let me
 17 re-ask this a better way. When he passed away, he
 18 was still a resident of Soda Springs, but he had
 19 been placed in a hospital in Logan; is that right?
 20 A. Yes.
 21 Q. Okay. Did your father ever loan you
 22 any money?
 23 A. He did in 1982, I believe.
 24 Q. Okay. How much did he loan you?
 25 A. \$3,000.

Page 55

1 Q. Okay. Did he continue to do some
 2 part-time work?
 3 A. He was working part-time specifically
 4 at the ranch; is that what you're asking?
 5 Q. Right. Right.
 6 A. He did -- if he did, it wasn't -- you
 7 know, not where there was anything of significance.
 8 Q. Okay. Did he work anywhere else?
 9 A. Yes, he did. He worked pretty
 10 extensively at the Enders.
 11 Q. Okay. Now, when you -- when he
 12 became -- started slowing down, as you've talked
 13 about it, were you involved in his care at all?
 14 A. No.
 15 Q. Okay.
 16 A. And he was fairly mobile and able to
 17 take care of himself right up to the end.
 18 Q. Okay. Did he ever have to go into a
 19 care center?
 20 A. Not that I can recall.
 21 Q. Okay. Was his primary treating
 22 physicians in Pocatello or in Salt Lake City?
 23 A. I would -- to my recollection, they
 24 were in Logan --
 25 Q. Okay.

Page 54

1 Q. Okay. Did he ever cosign any notes
 2 for you?
 3 A. Not that I'm aware of. Not that I can
 4 recall.
 5 Q. Now, did you ever -- were you ever
 6 involved in the purchase of any livestock for the
 7 ranch?
 8 A. No.
 9 Q. Have you ever seen any appraisals of
 10 the property prior to the 2009 appraisal, which we
 11 talked about yesterday in a deposition at which you
 12 were present?
 13 A. No, I have not.
 14 Q. Have you ever had any conversations
 15 with John Souza?
 16 A. Yes.
 17 Q. Okay. Why don't you tell me about
 18 those. Like, when was the first one?
 19 A. The first one was at my stepmother
 20 Beth Beus's residence, immediately after her
 21 passing.
 22 Q. And did she live in the Enders Hotel?
 23 A. No. She had another residence, a
 24 house.
 25 Q. In Soda?

Page 56

14 (Pages 53 to 56)

1 A. Yes.
 2 Q. Okay. And when was this, the
 3 conversation?
 4 A. I'd say the end of -- or about the
 5 middle of June of 2008.
 6 Q. Okay. Was that the first time you had
 7 ever met Mr. Souza?
 8 A. Yes.
 9 Q. Okay. So you were at Beth Beus's home
 10 following her funeral, end of June 2008. You --
 11 just you and Mr. Souza?
 12 A. No. I believe Doug was there. And I
 13 cannot recall who else would have been there --
 14 Q. Okay.
 15 A. -- at that time.
 16 Q. What was the subject matter of the
 17 conversation?
 18 A. The settling of my father's will I
 19 believe.
 20 Q. Okay. Did Mr. Souza tell you anything
 21 about your father's will and the trust?
 22 A. Not that I can recall.
 23 Q. Okay. Did he talk about any of his
 24 work as trustee?
 25 A. Not that I can recall.

Page 57

1 Q. Okay.
 2 A. I have -- I have a very poor
 3 recollection of that --
 4 Q. Okay.
 5 A. -- that meeting.
 6 Q. Did you have -- do you have any
 7 recollection or feeling today as to what, if
 8 anything, was resolved at that meeting or what was
 9 going to happen after that meeting?
 10 A. I don't have any recollection of that.
 11 Q. Okay. Have you talked to him since
 12 that time?
 13 A. I did. It seems like it was in April.
 14 Jerry and I had went and talked to him about a
 15 conservation easement and the possibility of maybe
 16 having a settlement --
 17 Q. Okay.
 18 A. -- to the will.
 19 Q. And where did this take place?
 20 A. At Mr. Souza's office.
 21 Q. Okay. And what did Mr. Souza tell
 22 you, if anything?
 23 A. He mostly asked questions about what
 24 we -- what we were -- what we had in mind as far as
 25 plans for the ranch and for the conservation

Page 58

1 easement. I don't remember him really telling me
 2 anything.
 3 Q. Did it appear to you that he had any
 4 idea what you were talking about when you talked
 5 about a conservation easement?
 6 A. He didn't -- I couldn't tell. I could
 7 not tell whether he understood the conservation
 8 easement completely or whether he was familiar with
 9 one or...
 10 Q. Okay. What did he tell you that he
 11 would do, if anything?
 12 A. I can't remember. I don't have a
 13 recollection of it.
 14 Q. Okay. And it is correct, isn't it,
 15 that when you approached Mr. Souza, you were
 16 approaching him as the trustee of your father's
 17 trust; correct?
 18 A. Yes.
 19 Q. Not as your personal lawyer or
 20 anything of that nature?
 21 A. No.
 22 Q. And so I'm clear, sitting here today,
 23 you can't remember his reaction or if he said he
 24 was going to do anything or if he just sat there
 25 and took notes or what?

Page 59

1 A. I honestly can't remember --
 2 Q. Okay.
 3 A. -- and be accurate about it.
 4 Q. Okay. Why don't you tell me your
 5 understanding of what the conservation easement
 6 proposal is or was?
 7 A. It is my understanding that the
 8 conservation easement was a plan to block
 9 development on the ranch to preserve it for
 10 wildlife -- specifically, deer and elk -- migration
 11 to the wintering grounds.
 12 It was -- it first would have taken a
 13 \$20,000 donation to do a development appraisal on
 14 it that was not -- nobody knew where the money was
 15 coming from. And it was going to be probably about
 16 a six-month to a year operation to receive that
 17 money, to locate that money.
 18 And then we would start on the path of
 19 trying to find the money for the easement itself,
 20 which, to my understanding, was about 40 percent of
 21 the difference between the development appraisal
 22 and the agricultural appraisal.
 23 And I had contacted the head of the
 24 trust, and what it looked like it was boiling down
 25 to was most of it being a donation by the owners

Page 60

15 (Pages 57 to 60)

1 and not any real recovery of any funds being
 2 offered by them.
 3 Q. When you said you contacted the
 4 developer -- who did you contact?
 5 A. The land trust, who was going to
 6 handle the conservation easement.
 7 Q. Which land trust is this?
 8 A. It is the Land Trust of Pocatello.
 9 That's the name of it, the Land Trust, I believe.
 10 Q. Okay.
 11 MR. BUDGE: Excuse me, Counsel.
 12 The Sagebrush Steppe Land Trust?
 13 THE WITNESS: Yes.
 14 JERRY BEUS: Yes.
 15 MR. BUDGE: If you want to know the name of
 16 it.
 17 MR. SMITH: The Sagebrush Steppe?
 18 MR. BUDGE: Sagebrush Steppe, S-t-e-p-p-e,
 19 Land Trust.
 20 MR. SMITH: Okay.
 21 Q. (BY MR. SMITH) Okay. Did you have
 22 any -- so you contacted the Sagebrush Steppe Land
 23 Trust and talked to the director?
 24 A. The lady that was going to be
 25 collecting or overseeing the conservation easement.

Page 61

1 Q. Okay. Was anybody -- did you ever
 2 talk to anybody at the Department of Fish & Game
 3 about this?
 4 A. At a meeting that Jerry and I
 5 attended.
 6 Q. Okay. And was that a different
 7 meeting than talking to John Souza and Sagebrush
 8 Steppe or at the same time?
 9 A. It would be -- the chronology of it
 10 was we met with the -- at a general meeting -- an
 11 overall meeting with the Sagebrush Steppe and the
 12 Idaho Fish & Game representative and a Rocky
 13 Mountain Elk Foundation representative. We had
 14 that meeting.
 15 And then we went from that meeting and
 16 had a meeting with Mr. Souza to discuss this
 17 conservation easement, some possible plans.
 18 And then probably a week or so later,
 19 I called the Sagebrush Steppe rep and questioned
 20 her a little bit further on what was taking place,
 21 because it wasn't real clear to me what their --
 22 what was happening at that point.
 23 Q. Okay. Now, after these meetings took
 24 place and your phone call, to your knowledge, did
 25 Mr. Souza do anything to follow up on this, or did

Page 62

1 he talk to you about it?
 2 A. Not -- not to my knowledge. Not to my
 3 recollection.
 4 Q. Okay. And your understanding --
 5 strike that.
 6 Where did you leave it? Did you ever
 7 get back with these people or with Mr. Souza, or
 8 what happened?
 9 A. I came to the conclusion that it was
 10 something that was such a big gamble that I did not
 11 want to get involved in it. I did not see any end
 12 at the light of the -- I did not see any real
 13 resolution to it for -- for possibly two years or
 14 longer. And the details that were presented at the
 15 meeting and that I was able to put together made
 16 little sense to me.
 17 Q. To your knowledge, did Mr. Souza ever
 18 pursue it any further?
 19 A. Not to my knowledge.
 20 (Jerry Beus exited the room.)
 21 Q. (BY MR. SMITH) And you haven't
 22 pursued it any further?
 23 A. No.
 24 Q. Now, in concept, if there was an
 25 easement or a conservation easement or something

Page 63

1 worked out with the land trust or people of that
 2 nature that got you your one-third value left to
 3 you in the will, do you have any problem in the
 4 concept with a conservation easement being created
 5 on the ranch?
 6 A. I would need to see the figures and
 7 the dollar amounts and the dates before I would say
 8 yes or no.
 9 Q. Okay. What I'm trying -- mine is
 10 more -- it's a more broad and general question. I
 11 mean, assuming all that worked out to your
 12 satisfaction, do you have any philosophical
 13 opposition to that sort of use of the ranch?
 14 A. Absolutely not.
 15 MR. BUDGE: Can we go off the record for a
 16 just a second?
 17 MR. SMITH: Yes.
 18 (A discussion was held off the
 19 record.)
 20 (Jerry Beus entered the room.)
 21 MR. SMITH: Let's go back on the record.
 22 Q. (BY MR. SMITH) I just have a few more
 23 areas of inquiry.
 24 Did you ever -- did you have any more
 25 conversations with Mr. Souza after the two we've

Page 64

16 (Pages 61 to 64)

1 already talked about?
 2 A. Not that I can recall.
 3 Q. Okay. Do you recall ever receiving a
 4 trustee's report?
 5 A. No.
 6 Q. How about a copy of a trust income tax
 7 statement?
 8 A. No.
 9 Q. Did you ever have conversations with
 10 either Monte Whittier or Max Whittier?
 11 A. I had one conversation with Max in, I
 12 believe, 1986, after my father had passed.
 13 Q. And what was the subject matter of
 14 that conversation?
 15 A. I don't recall.
 16 Q. Okay. Did you ever receive any
 17 reports from either Max or Monte Whittier?
 18 A. No.
 19 Q. Okay. Do you recall any conversations
 20 with your stepmother, Beth Beus, about
 21 conversations with either of the Whittiers or
 22 Mr. Souza?
 23 A. No, I don't.
 24 MR. SMITH: Okay. Why don't you give me
 25 about five minutes.

Page 65

1 MR. BUDGE: Okay.
 2 (A recess was taken from 11:44 a.m. to
 3 11:52 a.m.)
 4 MR. SMITH: Back on the record.
 5 THE WITNESS: I'd like to clarify something
 6 right at the start, though.
 7 Q. (BY MR. SMITH) Okay.
 8 A. Regarding the communications with
 9 John Souza, I told you the ones that I had
 10 directly.
 11 Q. Okay.
 12 A. But through Randy, I've had others
 13 with Randy doing business with Mr. Souza.
 14 Q. Okay. Yeah. I'll get Randy's
 15 communications with Souza.
 16 Have you ever talked to him on the
 17 telephone as opposed to a face-to-face --
 18 A. I have a couple of times.
 19 Q. Do you recall the substance of those
 20 conversations?
 21 A. Just to see if we could talk about
 22 getting a resolution to the trust and my father's
 23 will, and I don't have any specifics on that, that
 24 I can recall.
 25 Q. Okay. But as far as you recall,

Page 66

1 nothing came of those conversations?
 2 A. No.
 3 MR. SMITH: Okay. I'm done with him.
 4 (The deposition concluded at 11:54 a.m.)
 5 -ooOoo-
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Page 67

VERIFICATION

STATE OF)
) ss.
 COUNTY OF)

I, DALLAS K. BEUS, say that I am the witness
 referred to in the foregoing deposition taken July 1,
 2009, consisting of pages numbered 1 to 69; that I
 have read the said deposition and know the contents
 thereof; that the same are true to my knowledge, or
 with corrections, if any, as noted.

Page Line Should Read Reason

DALLAS K. BEUS

Subscribed and sworn to before me this
 day of 2009, at , Idaho.

(Seal) Notary Public for Idaho
 My Commission Expires

Page 68

17 (Pages 65 to 68)

REPORTER'S CERTIFICATE

STATE OF IDAHO)
) ss.
COUNTY OF BONNEVILLE)

I, Daniel E. Williams, CSR, RPR, and Notary
Public in and for the State of Idaho, do hereby
certify:

That prior to being examined DALLAS K. BEUS, the
witness named in the foregoing deposition, was by me
duly sworn to testify to the truth, the whole truth,
and nothing but the truth;

That said deposition was taken down by me in
shorthand at the time and place therein named and
thereafter reduced to typewriting under my direction,
and that the foregoing transcript contains a full,
true, and verbatim record of said deposition.

I further certify that I have no interest in the
event of the action.

WITNESS my hand and seal this 9th day of July,
2009.

Daniel E. Williams
Idaho CSR No. 686,
Notary Public in and for
the State of Idaho.

My Commission Expires: 02/12/15

Page 69

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

DALLAS BEUS, individually, DOUG)
BEUS, individually,)
) Case No.
Plaintiffs,) CV-09-1822-OC
)
vs.)
)
JOHN C. SOUZA, Trustee of the Lynn)
G. Beus Trust; JERRY BEUS,)
individually,)
)
Defendants.)

DEPOSITION OF DOUGLAS J. BEUS
Wednesday, July 1, 2009, 1:00 p.m.
Pocatello, Idaho

Daniel E. Williams,
RPR, CSR

EXAMINATION

DOUGLAS J. BEUS	Page
By Mr. Smith.....	4
By Mr. Budge.....	41
By Mr. Smith.....	46

NO EXHIBITS

Page 3

DEPOSITION OF DOUGLAS J. BEUS
BE IT REMEMBERED that the deposition of
DOUGLAS J. BEUS was taken by the attorney for
Defendant Jerry Beus at the office of RACINE OLSON NYE
BUDGE & BAILEY, CHTD., located at 201 East Center,
Pocatello, Idaho, before Daniel E. Williams, Court
Reporter and Notary Public, in and for the State of
Idaho, on Wednesday, July 1, 2009, commencing at the
hour of 1:00 p.m., in the above-entitled matter.

APPEARANCES

For the Plaintiffs:
RACINE OLSON NYE BUDGE & BAILEY, CHTD.
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For Defendant Jerry Beus:
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BY: STEPHEN C. SMITH
877 Main Street, Suite 1000
Post Office Box 1617
Boise, Idaho 83701-1617
(208) 344-6000

Also Present:
Dallas K. Beus
Jerry Beus

Page 2

(The deposition proceeded at 1:12 p.m. as follows:)

DOUGLAS J. BEUS,
produced as a witness at the instance of Defendant
Jerry Beus, having been first duly sworn, was
examined and testified as follows:

EXAMINATION

BY MR. SMITH:

Q. Mr. Beus, my name is Steve Smith. And
as you know, I represent Jerry Beus in a lawsuit
that you're the plaintiff in, filed in the Sixth
District Bannock County District Court here in
Pocatello.

Could you initially, for the court
reporter, state your full name, please?

A. Douglas J. Beus.

Q. And where do you reside, sir?

A. Evanston, Wyoming.

Q. And how old are you?

A. 54.

Q. And what's your date of birth?

A. [REDACTED]

Q. And how are you currently employed?

A. I'm employed with Chevron USA

Page

1 (Pages 1 to 4)

1 Corporation.

2 Q. And what do you do?

3 A. I'm an automation analyst.

4 Q. This morning you were present for your
5 brother Dallas's deposition, and you heard the same
6 information I provided about I'm going to ask you a
7 series of questions. And for the benefit of the
8 court reporter, you need to wait till I finish and
9 then answer the question out loud, so that he can
10 take down all of the information.

11 From time to time, lawyers sometimes
12 make objections or say things to each other on the
13 record that are primarily for the benefit of the
14 Court. If that occurs during this deposition, you
15 should wait until we are finished speaking for the
16 record and then, unless specifically instructed by
17 your lawyer, go ahead and answer the question.

18 From time to time, I will ask a
19 question that you don't understand or I misstate
20 something or I'm confused or you don't understand
21 what I'm saying or trying to ask. If that occurs,
22 go ahead and ask me to restate it or repeat it or,
23 if you need to, have the court reporter read the
24 question back.

25 If you need to take a break, just tell

Page 5

1 Q. Okay. Anything after high school?

2 A. Just different certifications in

3 electrical and information technology. I got a
4 journeyman's license. I was licensed in 78.

5 Q. A journeyman electrician?

6 A. Yes.

7 Q. Okay. Are you an IBEW member?

8 A. No.

9 Q. Okay. Could you describe your work
10 experience for me, please, starting after high
11 school?

12 A. In 1973, after graduation, I moved to
13 Salt Lake City and went to work as an apprentice
14 mechanic as Don Richards Lincoln-Mercury for
15 approximately three months.

16 Q. I forgot to ask one question.

17 MR. BUDGE: Can we go off the record for
18 one second here?

19 (A discussion was held off the
20 record.)

21 (A recess was taken 1:24 p.m. to
22 1:31 p.m.)

23 MR. SMITH: Back on the record.

24 Q. (BY MR. SMITH) Okay. I think where
25 we left off, you, in 1937, moved to Salt Lake City

Page 7

1 me.

2 And that's probably about it. I may
3 think of something.

4 Oh, at the end of the deposition,
5 you'll have the opportunity to read and review it.
6 And the same thing will occur that I talked to your
7 brother about. If you change your testimony, I'll
8 have an opportunity to comment on it, if you make
9 written changes.

10 However, today, if -- like your
11 brother, Dallas, did, if you remember something, go
12 ahead and bring it up either after a break or
13 whenever it occurs to you.

14 Have you ever had your deposition
15 taken before?

16 A. No, I haven't. No.

17 Q. Okay. I want to go through some of
18 the same background questions that I asked your
19 brother. Could you state, first, your education
20 for me?

21 A. High school diploma.

22 Q. Okay. From Soda Springs?

23 A. Yes.

24 Q. In what year?

25 A. 1973.

Page 6

1 and were an apprentice mechanic at a Richards
2 Lincoln-Mercury dealership?

3 A. Yes, sir. Correct.

4 Q. Okay. And you were there about
5 three months?

6 A. Yes.

7 Q. Okay. Where did you go after that?

8 A. Red Wing Shoe warehouse.

9 Q. That was in Salt Lake?

10 A. Yes.

11 Q. And how long were you there?

12 A. About three months.

13 Q. Okay. Doing warehouse work?

14 A. Yes.

15 Q. Were you a union member there, a
16 teamster or anything?

17 A. No.

18 Q. After the Red Wing Shoe warehouse?

19 A. Moved back to Soda Springs, Idaho.

20 Q. Okay. And what did you do there?

21 A. I worked as a laborer off and on. I'm
22 not real sure of the dates. I guess for, like,
23 six months.

24 Q. I may have asked you this before: Are
25 you a member of any union?

Page

1 A. No.
 2 Q. Okay. Never been a member of a union?
 3 A. No.
 4 Q. Okay.
 5 A. Wait. I was a member of the union at
 6 Don Richards Lincoln-Mercury. They were unionized
 7 there, but -- three months.
 8 Q. Okay. But that was the only time?
 9 A. That's it.
 10 Q. Okay. So you worked off and on as
 11 a -- was this on farms or --
 12 A. No, at the -- around at the different
 13 plants.
 14 Q. Okay.
 15 A. Monsanto, Becker.
 16 Well, I take that back. During that
 17 period of time, I ran some heavy equipment for
 18 Vaughn Smith Construction during that period of
 19 time, for approximately six months.
 20 Q. Okay.
 21 A. And then I went to work for Drabow
 22 (phonetic).
 23 Q. Okay. What did you do there?
 24 A. I was a laborer on a tipple.
 25 THE REPORTER: On a tipper?

Page 9

1 THE WITNESS: A tipple, t-i-p-p-l-e.
 2 THE REPORTER: Oh, okay. Thank you.
 3 Q. (BY MR. SMITH) What's a tipple?
 4 A. It handles ore off the trucks and
 5 reloads it.
 6 Q. Okay.
 7 A. It does a slight job of making it a
 8 finer product.
 9 Q. Okay. How long were you with Drabow?
 10 A. Approximately three months. It wasn't
 11 that long.
 12 Q. Okay. Which would take us up to
 13 probably mid-1974?
 14 A. Uh-huh. That's correct.
 15 Q. Okay.
 16 A. Approximately then.
 17 Q. What did you do then?
 18 A. I went to work for Kerr-McGee an
 19 operator.
 20 Q. What did you operate?
 21 A. What?
 22 Q. Yeah. What type of equipment?
 23 A. Process -- plant process.
 24 Q. Okay. And how long were you with
 25 Kerr-McGee?

Page 10

1 A. Six months.
 2 Q. Okay. Where did you go then?
 3 A. There was a period of time I wasn't
 4 employed, and then I went to work for approximately
 5 two or three, four months, something like that.
 6 Then I went to work at J.R. Electric.
 7 Q. Okay. As an apprentice?
 8 A. As an apprentice motor wireman.
 9 Q. How long were you there?
 10 A. Approximately two years is as close as
 11 I can remember. That was quite a while ago.
 12 Q. Okay. Were you an apprentice the
 13 whole time, or did you move to journeyman status?
 14 A. No, I moved to journeyman.
 15 Q. Okay.
 16 A. That's journeyman motorman, not
 17 journeyman electrician.
 18 Q. Right.
 19 Okay. You were there two years, and
 20 that would take us to about 1977, roughly?
 21 A. No. Back up, then. I wasn't there
 22 that long. Maybe a year.
 23 Q. Okay.
 24 A. Yeah, one year there. There was quite
 25 a few jobs.

Page 11

1 Q. All right.
 2 A. I really have a hard time placing the
 3 exact dates because I had a lot of jobs.
 4 Q. Okay.
 5 A. Some of them construction, some of
 6 them not construction.
 7 After that, I went to white ticket --
 8 oh, I did have another. Excuse me. I need to back
 9 up and restate that I did work as a white ticket
 10 electrician on a job at Conda, Idaho. I went from
 11 JR Electric to Jelco as an apprentice electrician.
 12 Q. Okay. And where after Jelco?
 13 A. Jelco. for three months. And then I
 14 went to work for Corky's Electric.
 15 Q. You said Corky's Electric?
 16 A. Corky's Electric.
 17 Q. Okay.
 18 A. And there I worked for about
 19 three months.
 20 Q. Where is Corky's, Soda or here?
 21 A. Soda, Grace, Spanish Fork, Utah.
 22 Q. Okay. Did you live in Soda this whole
 23 time?
 24 A. I did.
 25 Q. Okay. From the time you came back

Page 1

3 (Pages 9 to 12)

1 from Salt Lake City and we've been talking about
2 these various plants and electrical contractors,
3 were you residing in Soda during that time?

4 A. Yes, I was.

5 Q. Okay. So Corky's, you were there
6 three months?

7 A. Uh-huh. And then went to work for
8 Lamb Engineering with Corky.

9 Q. Lamb?

10 A. Lamb Engineering.

11 Q. And you said "with Corky"?

12 A. With Corky.

13 Q. Okay. Is Corky a person?

14 A. Yeah. Corky -- yes, Corky Wilson. I
15 don't know his real name. That's all I ever knew
16 him as was Corky.

17 Q. Okay. C-o-r-k-y, right?

18 A. Correct.

19 Q. Okay.

20 A. He lives in Grace, Idaho.

21 Q. Okay. Lamb Engineering, L-a-m-m?

22 A. L-a-m-b.

23 Q. Okay.

24 A. Out of Salt Lake.

25 Q. Salt Lake, okay.

Page 13

1 A. Approximately mid-1975.

2 Q. Oh, mid-'75, okay. Okay. And went to
3 Kemmerer and worked for who again?

4 A. Sublette Electric.

5 Q. Okay. The same company Dallas worked
6 for?

7 A. Yes.

8 Q. Okay.

9 A. I was there for approximately
10 three-and-a-half years. That's where I journeyed
11 out, in 1978.

12 Q. Okay.

13 A. Okay. And then I went to -- I
14 started -- I quit Sublette Electric in
15 approximately 1980, and I started my own company
16 called Mobile Electric.

17 Q. Okay.

18 A. And then I ran that for about a year,
19 sold that out to a partner.

20 Q. Okay.

21 A. And in 1981, I went to work at the
22 state hospital as an electrical supervisor.

23 Q. Where is that located?

24 A. Evanston, Wyoming.

25 Q. Okay. Okay.

Page 15

1 A. At that point, we moved over to -- we
2 did a job in Utah and went from Utah to Wyoming.
3 In Utah, I was working as an electrician. In
4 Wyoming, I started as an electrical lineman.

5 Q. Now, the electrician, you were a
6 journeyman by this point; right?

7 A. No.

8 Q. Oh, you weren't?

9 A. No.

10 Q. So you were still an apprentice?

11 A. Right.

12 Q. Okay. Then you went to be a lineman?

13 A. Yes.

14 Q. Apprentice too?

15 A. I don't know. I moved up to a
16 supervisor, so I don't know if I was really -- I
17 was an apprentice/supervisor type.

18 Q. Okay.

19 A. And that took me right to the -- about
20 mid-1975. We was in Pinedale, Wyoming, doing a
21 line job.

22 Q. Okay.

23 A. And I quit approximately in mid-1975
24 and went to work for Sublette Electric in Kemmerer.

25 Q. Okay. You quit in what year?

Page 14

1 A. In the latter part of '81, I went to
2 work for Daniels Construction as a journeyman
3 electrician.

4 Q. Okay.

5 A. And in mid-1982, I went to work for
6 Chevron as an electrician and instrument
7 technician.

8 Q. Was this also in Evanston?

9 A. Yes, it is.

10 Q. Okay. How long were you with Chevron?

11 A. I'm still with Chevron.

12 Q. Okay. So the --

13 A. It's been 27 years.

14 Q. Okay.

15 A. But I've had several different jobs in
16 that period of time.

17 Q. What is your current title now?

18 A. Automation analyst.

19 Q. Still in Evanston?

20 A. Yes. Well, I'm based in Evanston, and
21 I do work around the state of Wyoming.

22 Q. Okay. Are you married?

23 A. No, I'm not.

24 Q. Okay. Do you have children?

25 A. Yes, I do.

Page

1 Q. How many do you have?
 2 A. Two boys.
 3 Q. And their ages?
 4 A. 20 and 24.
 5 Q. I may skip around a little bit, as
 6 opposed to a more logical order, as things occur to
 7 me.
 8 I know I asked Dallas this: At any
 9 time during -- with the boys, did you ever have
 10 them at the ranch visiting their grandparents or
 11 their uncle or anything of that nature?
 12 A. No. My dad wasn't alive at that time.
 13 And they weren't on the ranch by the time they were
 14 born.
 15 Q. Have your sons ever been on the ranch?
 16 A. Yes.
 17 Q. Okay. And when was that?
 18 A. I think in '92, mid -- around
 19 mid-1992, I took them out, and we went up to the
 20 sheep corrals and down to the pond.
 21 Q. Okay. Any other times?
 22 A. Yes. In 2003 -- well, off and on, I
 23 took them out once in a while just to drive around
 24 and look. I'd say two to three times over that
 25 many years I took those boys.

Page 17

1 Q. Okay. And you were about -- tell me
 2 about 2003.
 3 A. In 2003, I spent approximately --
 4 well, my son I took down for a hunting trip, and he
 5 went out with Jerry on November 14th of 2003.
 6 Q. November 14th?
 7 A. Yeah. That's what it's got on the
 8 pictures.
 9 Q. I'm sorry?
 10 A. Yes.
 11 Q. How do you remember that specific
 12 date?
 13 A. Pictures.
 14 Q. Pictures, okay.
 15 Deer hunting?
 16 A. I think it was elk.
 17 Q. Elk hunting, okay.
 18 A. I didn't go. Jerry took my son, Chad.
 19 Q. Okay. Any other times that you
 20 recall?
 21 A. No. There was maybe one in -- towards
 22 the mid-'90s where we did drop a worm in the pond
 23 out there. That's the only other time I can
 24 remember that we went out there.
 25 Q. Okay.

Page 18

1 A. That I took them out.
 2 Q. All right. Now, during -- it looks to
 3 me like you moved to Wyoming in approximately 1975?
 4 A. That is correct, the latter part of
 5 '75.
 6 Q. And then since the latter part of '75,
 7 you've lived almost all the time in Wyoming?
 8 A. No. I transferred to Colorado in '89,
 9 1989.
 10 Q. Okay. Let me re-ask it this way:
 11 Since 1975, have you ever lived in Soda?
 12 A. No.
 13 Q. Okay. So that was about the last time
 14 you were a resident in Soda Springs --
 15 A. Yes, it is.
 16 Q. -- is 75?
 17 A. Yes.
 18 Q. Okay. In the time period that you
 19 lived in 1975 -- strike that. Let me re-ask it.
 20 Dallas testified that upon your
 21 graduation from high school, your stepmother,
 22 Beth Beus, invited you to both leave the house. Is
 23 that a fair statement?
 24 A. He was -- he was being gentle. We
 25 were told to leave.

Page 19

1 Q. Okay. Would you -- is it fair to
 2 describe it as you were kicked out of the house?
 3 A. Yeah. Yes. I would say that, yes.
 4 Q. Okay. From the time you were kicked
 5 out of the house until you departed Soda Springs in
 6 1975, did you ever take up residence with your
 7 father and stepmother again?
 8 A. No.
 9 Q. Okay. During that same time period,
 10 did you ever work on the ranch?
 11 A. No, not to my knowledge.
 12 Q. At any time -- strike that.
 13 Dallas described working on the ranch
 14 as a child or a teenager up until the time you
 15 graduated?
 16 A. We started as a child.
 17 Q. Okay. I guess my question is, was
 18 there a time that you worked on the ranch?
 19 A. From approximately eight years old
 20 until the year we graduated. We had no visible
 21 choice about it. It was either work or move out.
 22 MR. BUDGE: This is off the record.
 23 --(A discussion was held off the
 24 record.)
 25 MR. SMITH: Back on the record.

Page .

1 Q. (BY MR. SMITH) From eight years old
2 until your graduation from high school, you worked
3 on the ranch?

4 A. That's correct.

5 Q. Okay. However, subsequent to that,
6 you did not?

7 A. Correct.

8 Q. Okay. Do you recall any conversations
9 with your father regarding -- where he offered to
10 let you take it over from Jerry?

11 A. No.

12 Q. Do you recall any conversations with
13 your father where he suggested you and your
14 brothers go into business together with the ranch?

15 A. No.

16 Q. Dallas testified that he rarely went
17 to the ranch because he did not feel welcome or
18 comfortable. Did you have the same feelings?

19 A. I didn't care one way or the other
20 whether I was welcome or not. That was my total
21 attitude towards it. I didn't feel, really, one
22 way or the other. I didn't feel that it was my
23 business to be in his business. But it was also
24 still in a trust, so it was basically open
25 territory to a certain degree.

Page 21

1 Q. Okay. When you say --

2 A. I didn't go there -- excuse me. Go
3 ahead.

4 Q. No. I didn't let you finish.

5 A. I didn't go there and mess with
6 anything. I went there and rode horses a couple of
7 times. And that was about it --

8 Q. Okay.

9 A. -- until 2003, and then I went out
10 there and worked for a period of time.

11 Q. Okay. We'll get to that here in a
12 second.

13 So when you say it was not your
14 business to be in his business, are you talking
15 about Jerry's business?

16 A. Correct.

17 Q. And the way he was operating the
18 ranch?

19 A. Correct.

20 Q. Okay. How about your dad's business,
21 were you --

22 A. Absolutely not. That was hands off.

23 Q. Okay. So as far as the way your
24 father operated the ranch and as far as the way
25 Jerry operated the ranch, you didn't get involved?

Page 22

1 A. That was totally hands off.

2 Q. Okay. Now, in 2003, you went to the
3 ranch and worked for a time?

4 A. I did.

5 Q. Okay. Tell me about that.

6 A. I went out there and worked on haying.
7 And let's see. What all did we do? Mainly, just
8 haying.

9 Q. Okay. How did you make the decision
10 to go out and work? Did Jerry ask you, or did you
11 just --

12 A. Jerry did ask me. Yes, he did.

13 Q. Okay. And how long did you work for?

14 A. Approximately ten days.

15 Q. Okay. Mostly bucking hay or --

16 A. Bucking hay, moving hay, fixing
17 equipment, baling hay.

18 Q. Did your sons go with you?

19 A. No.

20 Q. It was just you?

21 A. Just me.

22 Q. Okay. Who else was working there?
23 Was Jerry working there?

24 A. Jerry was there, yeah.

25 Q. Okay. Any hands?

Page 23

1 A. I can't remember -- there was a couple
2 of hired men there at the same time. I can't
3 remember who he had at the time. They changed
4 pretty regularly. There was Bill, a sheep herder,
5 though. I do remember him. I don't know where he
6 went, but he was there at the time.

7 THE REPORTER: And you said Bill, the
8 sheepher?

9 THE WITNESS: Bill, a sheep herder.

10 THE REPORTER: Oh. I'm glad I clarified
11 that. Sorry.

12 Q. (BY MR. SMITH) Was he a Basque guy?

13 A. No. He was Caucasian. He was a
14 deejay out of Oregon. He was just out roaming
15 around and sheep herding.

16 Q. How would you characterize your
17 relationship with Jerry over the years?

18 A. Distant.

19 Q. Okay.

20 A. And the reason --

21 Q. Do you recall --

22 A. The reason for the distance is because
23 I had a career and I wasn't interested in what he
24 was doing, and I doubt if he was interested in what
25 I was doing.

Page 2

6 (Pages 21 to 24)

1 Q. All right. So you got your fill of
2 ranching when you were between the ages of eight
3 and --

4 A. Well if you've ever worked for an oil
5 company, it's all encompassing. You don't get a
6 chance to do much else but focus on your job.

7 Q. Okay.

8 A. Well, anyway, I didn't, because I
9 wanted to, you know, do the best I could and take
10 advantage of the opportunities that they offer,
11 which is pretty good.

12 Q. Okay. Were you ever, say, assigned to
13 the Middle East or anything with Chevron?

14 A. No. But I'm looking at it presently.
15 I'm looking at Africa and Russia and the Middle
16 East.

17 Q. Okay. Tell me about -- just based on
18 your observations when you were at the ranch, what
19 improvements, if any, had been made from the time
20 you left in 1973 until today?

21 A. Irrigation main lines and granaries.

22 Q. Okay. And the irrigation main lines
23 are -- would you agree with Dallas's
24 characterizations that you were here for earlier
25 this morning?

Page 25

1 A. Her payments and the tax payments.

2 Q. Okay.

3 A. But that was as far as it went. And
4 then she proceeded to say that that was her and
5 Jerry's business.

6 Q. She didn't want you involved in it?

7 A. She didn't want to go any farther than
8 that.

9 Q. Okay. Now, did you have a
10 relationship over the years with your natural
11 mother, Marjorie Seely?

12 A. I stopped and visited her. As far as
13 I was concerned, that was my mother.

14 Q. Okay. Now, remember, I talked to
15 Dallas about the number of times he visited the
16 ranch, and he said it was -- he had a number of
17 specific recollections of being on the property,
18 but he also drove around it a number of times. He
19 said maybe 20 times in the last 34 years.

20 Is that something you did from time to
21 time, drive around the property or --

22 A. Yes, I did.

23 Q. Okay. Do you know about how many
24 times?

25 A. Not that many. Maybe four.

Page 27

1 A. I do.

2 Q. Okay. What improvements did you
3 notice on the granaries?

4 A. That they were there.

5 Q. Okay. And they hadn't been in 1973?

6 A. That is correct.

7 Q. Anything else you recall?

8 A. No.

9 Q. Okay. Did you ever take any steps to
10 talk to Jerry about what improvements had been made
11 to the property?

12 A. Absolutely not. It was a hands-off
13 thing.

14 Q. Okay.

15 A. That was his business. That was
16 reinforced by Beth Beus. She basically took the
17 attitude that it was a closed situation between her
18 and Jerry, and I didn't feel like crying about it.

19 Q. So I take it from that answer that you
20 had some conversations with your stepmother about
21 the operation of the ranch and were basically
22 told --

23 A. She just said there were times that
24 the payments were late.

25 Q. Okay. Her payments?

Page 26

1 Q. Okay.

2 A. I wasn't really around it.

3 Q. Let me ask this: The times when you
4 came back to Soda Springs, did you normally go out
5 to the property?

6 A. No.

7 Q. Okay. Say, over the last 34 or so
8 years, did you come back to Soda Springs frequently
9 from Wyoming?

10 A. No.

11 Q. Okay.

12 A. I probably averaged twice a year.

13 Q. Okay. Was that primarily to visit
14 your parents?

15 A. Yes, it was.

16 Q. Okay. I think I asked you this
17 already just to make sure, but after you were asked
18 to depart in 1973, you never again lived on the
19 ranch property?

20 A. No. Well, I did too. I lived there
21 at approximately the same period of time Dallas was
22 there.

23 Q. Okay.

24 A. That same exact period of time I was
25 there too.

Page

7 (Pages 25 to 28)

1 Q. Okay. I believe he said it was a
2 fairly short period of time, about six months in
3 1975?

4 A. About that, as close as I can
5 remember.

6 Q. What is it that you would like to see
7 happen to the property?

8 A. Resolved as stated in the will.

9 Q. Okay. Anything else?

10 A. No.

11 Q. Okay. Do you care, one way or
12 another, whether it stays in the family or not?

13 A. No, absolutely not.

14 Q. And I take it from that, you don't
15 care what becomes of it after it's disposed of in
16 the will; correct?

17 A. Not -- no, not -- I don't. I really
18 have -- I don't. It's beyond my control.

19 Q. And I take it you do not want to ranch
20 it yourself?

21 A. No. I'm too old to start ranching.

22 Q. Have you been to the ranch enough to
23 describe its current condition?

24 A. Yes.

25 Q. Okay. What would you describe its

Page 29

1 father or Jerry had?

2 A. Absolutely not. That was hands off.

3 Q. Okay.

4 A. I was told to keep my nose out of it.

5 Q. Who told you that?

6 A. Beth and Dad.

7 Q. Okay. Have you had any conversations
8 with John Souza?

9 A. I had one at the period of time Beth
10 was buried, I think the day she was buried as a
11 matter of fact. John had come down from Pocatello.
12 Jerry had located him. And he'd come down to
13 discuss with Karen and Renee -- that's Beth's
14 biological daughters -- and Dallas and I -- first
15 off, they -- John mainly focused on the Beth Beus
16 will. And then he just kind of avoided the Beus
17 Estate issues.

18 Q. Say that again.

19 A. He avoided the Beus Estate. He really
20 didn't come -- he was not forthcoming with anything
21 about it.

22 Q. And when you say "he was not
23 forthcoming," expand on that. What did he --

24 A. Times, dates, when we could -- we
25 really had to kind of corner him to get him down

Page 31

1 current condition?

2 A. The fields look good. Around the
3 houses and the sheds are pretty run down, a lot of
4 junk laying around, broken down vehicles, broken
5 down equipment laying about everywhere.

6 Q. Okay. Do you have any recollection of
7 what it was like back in 1975?

8 A. You know, I really -- really don't
9 have a good recollection of it, because it just
10 wasn't in my focus in that time. I wasn't involved
11 in it. I was involved in survival, and I wasn't
12 paying attention to what the ranch was doing.

13 Q. Okay. When you say you were involved
14 in survival, do you mean something other than your
15 stepmother kicking you out and you having to fend
16 for yourself?

17 A. No, just creating a career and making
18 a paycheck. You know, I wasn't -- the ranch was
19 not in my field of vision --

20 Q. Okay.

21 A. -- just like anybody else starting
22 out. And I knew I wasn't part of the farm, so I
23 didn't pay much attention to it.

24 Q. Were you ever privy to or involved in
25 any of the financial arrangements that either your

Page 30

1 there in the first place. He just didn't want
2 to -- he just wasn't really punctual or anything.
3 He didn't have many facts or figures when he got
4 there. It was generally this and generally that,
5 nothing black and white. Everything was vague.

6 Q. Okay. Did you have any other
7 conversations with him besides that one?

8 A. I never have.

9 Q. Okay. And that's either --

10 A. Not that I recollect, anyway.

11 Q. Okay. And that's either in person or
12 by telephone.

13 A. Never.

14 Q. Okay. Were you involved in any of
15 these conversations that we've talked about earlier
16 with Dallas regarding a conservation easement?

17 A. I was.

18 Q. Okay. And where did those take place?

19 A. Oh, I can't give you dates at all. It
20 was very confusing to me, the whole thing. I never
21 did get a firm grip on anything about it. It was
22 just "what if," "maybe," "should have," "could
23 have," whatever. I never did get any real facts on
24 it. I never even understood it.

25 Q. Was Mr. Souza involved in that

Page

1 conversation?
 2 A. No.
 3 Q. Okay. Who was in the conversation?
 4 A. First, it was Dallas and I. We --
 5 Dallas said that Jerry proposed an offer of -- you
 6 know, maybe we could resolve this. Dallas and
 7 Jerry had been talking together about it, and they
 8 had set up a date that we got together after the
 9 first of the year to sit down. And I was
 10 actually -- supposedly been made an offer to be
 11 bought out at that time.
 12 Q. Okay. Who made you the offer to buy
 13 you out?
 14 A. Jerry and Dallas.
 15 Q. Okay. Do you recall what the terms of
 16 the offer were?
 17 A. Yes. It was -- we agreed to share the
 18 mortgage in order to proceed and get it, and then
 19 the sale price was set at \$2.9 million.
 20 Q. Was this the same proposal that had to
 21 do with the conservation easement?
 22 A. I don't know. This is just what was
 23 proposed to me.
 24 Q. Okay.
 25 A. And I contacted Randy about it and

Page 33

1 for you?
 2 A. Not that I'm aware of, not that I can
 3 remember.
 4 Q. Now, when you went back for that
 5 six-month period with Dallas in -- or at the same
 6 time Dallas was there, back in 1974 or '75, did you
 7 live in the same house with your dad and Beth, or
 8 did you live somewhere else?
 9 A. Somewhere else.
 10 Q. Okay. Where did you live?
 11 A. It was an old mobile home that was out
 12 behind the property.
 13 Q. Okay. Did Dallas live there too?
 14 A. Yes, he did. There was kind of a
 15 group of us that lived there at the time.
 16 THE REPORTER: I'm sorry?
 17 THE WITNESS: There was a couple of friends
 18 that was with us.
 19 Q. (BY MR. SMITH) Now, this is a
 20 different home. There's the main family home that
 21 Dallas described?
 22 A. Correct.
 23 Q. And then there's a second house I
 24 believe he said Beth's daughter and her daughter
 25 had lived in?

Page 35

1 told -- talked to Randy about it.
 2 Q. Randy wasn't at this meeting, I take
 3 it?
 4 A. No, he wasn't.
 5 Q. Okay. Were you ever present at a
 6 meeting where Mr. Souza was present where a
 7 conservation easement was proposed?
 8 A. No.
 9 MR. SMITH: Do you need a break?
 10 THE REPORTER: Would you mind?
 11 MR. SMITH: No.
 12 (A recess was taken from 2:15 p.m. to
 13 2:24 p.m.)
 14 MR. SMITH: Back on the record.
 15 Q. (BY MR. SMITH) Before we took our
 16 break, I was just asking a couple different things,
 17 some of the same questions that I asked Dallas.
 18 Did you ever get a loan from your
 19 father for any money?
 20 A. I did.
 21 Q. Okay. And what was that for?
 22 A. A honeymoon in 1980, \$3,000.
 23 Q. Okay. And anything else?
 24 A. No.
 25 Q. How about did he ever cosign any notes

Page 34

1 A. I don't know anything about that. I
 2 have no recollection of who lived where. I know
 3 Jerry lived in the one ranch house that was
 4 originally my uncle's place, the yellow house, for
 5 a number of years, starting in approximately -- I
 6 don't know -- '73, '74. I'm not sure. I can't
 7 remember the exact -- well, no, it was earlier than
 8 that. It was probably in '70 Jerry moved into the
 9 yellow house.
 10 And then Beth and Lynn were still in
 11 the old ranch house until approximately, as close
 12 as I can remember, 1975.
 13 And then they moved into the Enders
 14 and took over the Enders business there, the Enders
 15 Hotel, bar, and cafe.
 16 Q. Okay. What I'm more getting at -- I'm
 17 not so much interested in who lived in the houses,
 18 but there is a main ranch house --
 19 A. Yes.
 20 Q. -- that Beth and Lynn lived in?
 21 A. Uh-huh.
 22 Q. And then there's what you've called
 23 the yellow house?
 24 A. Yes.
 25 Q. It's the second house. And then you

Page

1 lived in a third manufactured --
 2 A. There was a mobile home hookup --
 3 Q. Okay.
 4 A. -- behind, and there was an old mobile
 5 home at that point. And I do mean old.
 6 Q. All right. That's what you lived
 7 in --
 8 A. Uh-huh.
 9 Q. -- in '74 or '75?
 10 A. Yes.
 11 Q. Okay. Now, in that six-month period
 12 of '74 or '75, did you work on the ranch?
 13 A. No.
 14 Q. Okay.
 15 A. And I do have something to state also
 16 about when I left the farm in 1973 and Beth had
 17 basically kicked us out of the nest. It wasn't out
 18 of animosity. It was more out of expectation that
 19 we left. I had no -- harbor no, really, ill
 20 feelings towards Beth for doing it. In fact, I
 21 have a lot of respect to this day for her doing
 22 that very thing.
 23 Q. Okay. Do you have the same feelings
 24 for your father?
 25 A. I love him very much still. I think

Page 37

1 he was one of the hardest working, honest people I
 2 knew.
 3 Q. Okay. Have you -- and I think I know
 4 the answer to this question, but you've never
 5 ranched or farmed, other than the growing up years?
 6 A. That is correct.
 7 Q. Okay. And sitting here today, you
 8 haven't made any in-depth study, have you, of what
 9 improvements have been made since 1975 to the
 10 Soda Springs ranch?
 11 A. No.
 12 Q. And what improvements you do know
 13 about are just based on your observations during
 14 visits to the ranch?
 15 A. That is correct.
 16 Q. And I take it you don't know anything
 17 about the water rights attached to the ranch?
 18 A. No, nothing.
 19 Q. Okay.
 20 A. I'm learning a little bit about what
 21 is legal and what is not legal and what we're
 22 proposing to bring back in to make it worth more
 23 irrigatable acres.
 24 Q. But sitting here -- do you recall the
 25 testimony yesterday about the Bear River drainage

Page 38

1 water right?
 2 A. Uh-huh.
 3 Q. Agrium, does that sound --
 4 A. Agrium (pronouncing)?
 5 Q. Agrium. What I'll call the Agrium
 6 right, you don't know anything about the history of
 7 that; correct?
 8 A. No, I don't.
 9 Q. Okay.
 10 A. But I do know that we surveyed and
 11 ditched out of the Wood Canyon Creek and irrigated
 12 a portion of that acreage up in that end.
 13 Q. Right. And that irrigation, that's
 14 not the one that's in the Snake River Basin
 15 Adjudication; right?
 16 A. Correct.
 17 Q. Okay. Do you know anyone who would
 18 have -- who would know the history of the Agrium
 19 water right?
 20 A. The only one I know that might know it
 21 is Torgesen. He farmed right next to -- right next
 22 to Agrium's sludge pond I think is where that water
 23 right was buried under.
 24 MR. BUDGE: Let's go off the record.
 25 (A discussion was held off the

Page 39

1 record.)
 2 MR. SMITH: That is all.
 3 Well, wait a minute. Let me finish.
 4 Q. (BY MR. SMITH) Other than someone
 5 from the Torgesens, do you know anybody else that
 6 might know about the Agrium water right?
 7 A. I was trying to think who would know
 8 where that creek ran, the Pannings (phonetic).
 9 DALLAS BEUS: Are we still off the record?
 10 MR. SMITH: No. We're on the record, but
 11 we can go off in just a second. We'll let him
 12 finish.
 13 THE WITNESS: That's what I was trying to
 14 think of yesterday, was if there was some way to
 15 find out where the creek had run for the
 16 irrigation, to see if that was still in place. But
 17 that's -- as far as I know -- that I have knowledge
 18 of, that was on Pannings' land there.
 19 MR. SMITH: Okay.
 20 JERRY BEUS: Are we off the record?
 21 MR. SMITH: No. We're still on. Hold on
 22 just a second. Let me finish up, and then we'll
 23 discuss our water right issue.
 24 Okay. That's all I have.
 25 MR. BUDGE: I have just a few to clarify

Page 40

1 the record, and then we'll finish up, if you don't
2 mind, Counsel.

3
4 EXAMINATION

5 BY MR. BUDGE:

6 Q. Doug, let me clarify. Both you and
7 Dallas testified about being asked to leave or, I
8 think you said, kicked out by your mother, Beth.
9 Was that about immediately after your high school
10 graduation in '73?

11 A. I would say it was in the month.

12 Q. And when you say "kicked out,"
13 can you explain what you meant by that or what Beth
14 had in mind, if you know? When you say "kicked
15 out," it would lead some of us to believe that she
16 was mad and wanted you out of the house for
17 discipline or bad relationships or the like.

18 A. No. It was not an easy job for her to
19 do what she did. I mean, it was -- I'm sure it was
20 tugging at her heartstrings too. It was tugging on
21 our heartstrings. It's always hard to jump out of
22 the nest and start flying a little bit. And there
23 really wasn't any bad feelings. It was an expected
24 time.

25 Q. So, in your view, was it a recognition

Page 41

1 Q. And you didn't make reference to a
2 number of communications that were done at your
3 request and Dallas's request directly to Jerry
4 through me as your attorney?

5 A. Yes. That is correct.

6 Q. And there were various offers in that
7 context between the attorneys, myself and
8 Mr. Nelson, and also communications with Mr. Souza;
9 correct?

10 A. Yes.

11 Q. And you don't have any concern, I
12 believe, neither you or Dallas, with me providing
13 those to Mr. Smith to bring him up to speed?

14 A. No. No, I don't have concerns. I
15 have -- I have trust that that was the correct
16 decision.

17 Q. And just so the record is clear, was
18 there one additional meeting that you and Dallas
19 and Jerry and Mr. Souza participated with sometime
20 in the summer or fall of 2008?

21 A. To my knowledge, it was in October of
22 2008. We met to discuss a memorandum of
23 understanding of what we were -- of what we were
24 trying to resolve at that point.

25 Q. That was a settlement conference that

Page 43

1 that the ranch was not sufficient to support all of
2 you and you had to go make your own living?

3 A. That is correct.

4 Q. At that particular time, Jerry, being,
5 what, six years older than you?

6 A. Uh-huh. Yes.

7 Q. Was Jerry already working and
8 operating the ranch at that time?

9 A. I don't really have a recollection of
10 that period of time. I think Jerry came in a
11 little bit later to really -- Jerry, at that time,
12 to me, was working -- running heavy equipment,
13 cranes, Cats. In fact, I think he was working out
14 at Drabow or something at that time.

15 Q. Let me shift gears in another
16 direction. Mr. Smith asked you, as well as Dallas,
17 a number of questions about communication that you
18 may have had with Mr. Souza, the trustee of the
19 trust, and also with your brother, Jerry.

20 Would it be correct that you answered
21 those in the perspective of personal conversations
22 you had with Mr. Souza --

23 A. Yes.

24 Q. -- or Jerry?

25 A. That is correct.

Page 42

1 was arranged in this office?

2 A. That is correct.

3 Q. And that's something that you and
4 Dallas asked me to do to see if the parties could
5 get together and work something out?

6 A. Yes. That was the beginning of trying
7 to resolve the differences.

8 Q. And as a result of that meeting, there
9 was a memorandum of understanding drafted that you
10 and Dallas signed and it met with your approval,
11 but Jerry didn't sign it because it didn't meet
12 with his approval?

13 A. That is correct.

14 Q. So there was no meeting of the minds
15 on that occasion as far as you know?

16 A. That is correct.

17 Q. You also -- counsel asked you about
18 some discussions -- I think you said it was in
19 April of 2009 -- between you and Dallas and Jerry,
20 when there was some communications towards perhaps
21 the two of them buying out your interests in the
22 ranch?

23 A. That is correct.

24 Q. Was there ever any meeting of the
25 minds reached on that?

Page .

1 A. No.
2 Q. Counsel asked you some questions about
3 that, and you said, if I recall right, you were
4 talking about a price based on the appraisal of
5 \$2.9 million and splitting the debt. Did the
6 discussions also involve whatever your share of the
7 equity is, that they might buy you out; is that --

8 A. That is correct.

9 Q. That was the rest of that story?

10 A. Yes, it is.

11 Q. And no agreement was reached?

12 A. No agreement was reached.

13 MR. BUDGE: Okay. That's all I had.

14 Thanks, Counsel.

15 Oh, excuse me. One other point.

16 Q. (BY MR. BUDGE) There was a comment
17 made concerning the condition of the farm that you
18 observed. Have you observed the farming practices
19 since the Lakeys began farming it this year?

20 A. Yeah. One thing I did observe was,
21 when I was there in 2003, that he had pulled back
22 and was not farming the same --

23 Q. "He" meaning Jerry?

24 A. Yes, Jerry.

25 When I was there in 2003, Jerry was

Page 45

1 not farming up to the edge of the tillable land.
2 He had pulled back and pulled back quite a ways on
3 the Sulfur end and over by the Panning Hill -- Big
4 Turn Hill, that I noticed was being farmed this
5 year under Lakeys. And it definitely looked like
6 things were coming up good and planted well.

7 Q. So basically the same land that Jerry
8 was farming that you observed is now being farmed
9 with the Lakeys, only they're farming some more
10 land?

11 A. Yes. They're farming the outer
12 perimeters and a couple of different fields that
13 weren't farmed down here in 2003.

14 MR. BUDGE: That's all I had. Thank you.

15 MR. SMITH: I have a couple of follow-ups.

16
17 FURTHER EXAMINATION

18 BY MR. SMITH

19 Q. First, on the land being farmed, do
20 you know what the Lakeys planted up to the edge of
21 Big Turn Hill and the Sulfur edge?

22 A. What was that?

23 Q. Do you know what the Lakeys planted,
24 what crop?

25 A. Apparently, it looks like wheat to me.

Page 46

1 It's still early. I have a hard time. I'm not the
2 farmer in the family.

3 Q. Okay. And during -- now I want to
4 switch to the fall 2008 meeting and the April 2009
5 meeting. Was Mr. Nelson present at those meetings?

6 A. No.

7 Q. Okay. Was Jerry represented?

8 A. No.

9 Q. Okay.

10 A. Well, in the 2008 -- well, I don't
11 know. John Souza and Jerry were sitting over
12 there. I understood it that John was representing
13 Jerry, but just in the meeting. I didn't -- we
14 hadn't even got -- picked the sides and did
15 everything. So I didn't understand the
16 relationship between Jerry and John in that
17 meeting. But Jerry and John were sitting there,
18 and we were sitting here -- right here --

19 Q. Okay.

20 A. -- on the other side.

21 Q. How about the April 2009 meeting, was
22 Mr. Souza there?

23 A. There was no legal representation at
24 all on either side.

25 Q. Okay.

Page 47

1 A. We had tried to get together and
2 resolve it without lawyers at that time, and we
3 were trying to resolve it amongst us.

4 MR. SMITH: Okay. That's all I have.
5 Thank you.

6 (The deposition concluded at 2:44 p.m.)

7 -ooOoo-

VERIFICATION

STATE OF)
) ss.
COUNTY OF)

I, DOUGLAS J. BEUS, say that I am the witness referred to in the foregoing deposition taken July 1, 2009, consisting of pages numbered 1 to 50; that I have read the said deposition and know the contents thereof; that the same are true to my knowledge, or with corrections, if any, as noted.

Page Line Should Read Reason

DOUGLAS J. BEUS

Subscribed and sworn to before me this
day of 2009, at , Idaho.

(Seal) Notary Public for Idaho
My Commission Expires

Page 49

REPORTER'S CERTIFICATE

STATE OF IDAHO)
) ss.
COUNTY OF BONNEVILLE)

I, Daniel E. Williams, CSR, RPR, and Notary Public in and for the State of Idaho, do hereby certify:

That prior to being examined DOUGLAS J. BEUS, the witness named in the foregoing deposition, was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true, and verbatim record of said deposition.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this 9th day of July, 2009.

Daniel E. Williams
Idaho CSR No. 686,
Notary Public in and for
the State of Idaho.

My Commission Expires: 02/12/15

Page 50

13 (Pages 49 to 50)

1 IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
2 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF
3 BANNOCK
4
5 DALLAS BEUS, individually;)
6 DOUG BEUS, individually,)
7 Plaintiffs,)
8 vs.) Case No. CV-09-1822-OC
9 JOHN C. SOUZA, Trustee of the)
10 Lynn G. Beus Trust; JERRY BEUS,)
11 individually,)
12 Defendants.)
13 _____)

14
15 DEPOSITION OF JERRY BEUS
16 JUNE 30, 2009
17

18
19 REPORTED BY:
20 JAHNENE SCHWISOW, CSR No. 760
21 Notary Public
22
23
24
25

1 ALSO PRESENT: Dallas Beus
2 Doug Beus
3 Brett Cahoon - Intern
4 Bucky Ryan - Intern
5
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Page 3

1 THE DEPOSITION OF JERRY BEUS was taken
2 on behalf of the Plaintiffs at the offices of
3 Racine, Olson, Nye, Budge & Bailey, Chartered,
4 201 East Center, Pocatello, Idaho, commencing at
5 9:51 a.m. on June 30, 2009, before Jahnene
6 Schwisow, Certified Shorthand Reporter and Notary
7 Public within and for the State of Idaho, in the
8 above-entitled matter.

9 APPEARANCES:

10 For Plaintiffs:

11 Racine, Olson, Nye, Budge & Bailey,
12 Chartered

13 BY RANDALL C. BUDGE

14 MARK S. SHAFFER

15 201 East Center Street

16 P.O. Box 1391

17 Pocatello, Idaho 83204-1391

18 For Defendant Jerry Beus:

19 Hawley, Troxell

20 BY STEPHEN C. SMITH

21 877 Main Street, Suite 1000

22 P.O. Box 1617

23 Boise, Idaho 83701-1617
24
25

Page 2

1 INDEX
2 TESTIMONY OF JERRY BEUS PAGE
3 Examination by Mr. Budge 5
4
5

6 EXHIBITS

7 NO. DESCRIPTION PAGE
8 23 - John Souza, Statement, Bill to 63
9 Jerry Beus, dated 09/30/2008,
10 5 pages
11 24 - Caribou County 2008 Property Tax 110
12 Bill, Parcel No. 09S42E100000, Bill
13 No. 30578, Beus Lynn G Trust/John C
14 Souza, 9 pages
15 (Exhibits 1 through 22 marked
16 outside of deposition and attached
17 to original transcript only for
18 reference purposes.)
19
20
21
22
23
24
25

Page 4

1 (Pages 1 to 4)

JERRY BEUS,
first duly sworn to tell the truth relating to
said cause, testified as follows:

EXAMINATION
QUESTIONS BY MR. BUDGE:

MR. BUDGE: Would you let the record
reflect that this is the time and place for the
deposition of Jerry Beus pursuant to notice,
taken in the case of Dallas and Doug Beus,
plaintiffs, versus John Souza, trustee, and Gary
Beus, defendants. And it's Bannock County Case
CV-09-1822-OC.

And present, for the record, I'm Randy
Budge representing the plaintiffs. We have here
plaintiffs, Dallas Beus and Doug Beus. Also,
Mark Shaffer from my office. And, of course, the
defendant, Jerry Beus, is present with his
attorney, Steve Smith.

Steve, can we have the usual
stipulation that objections except as to form of
the question would be reserved at time of trial?

MR. SMITH: Yes.

MR. BUDGE: Thank you.

Q. (BY MR. BUDGE) Would you state your
name and address for the record, please?

Page 5

you'll be giving me answers. And, of course, the
reporter here, Jahnene, from M&M, will write down
my questions and write down your answers. And so
as we go through this, it helps her out if we
don't talk over the top of each other. And I'll
try not to interrupt your answers and ask that
you try not to interrupt my questions.

I see you nodding, and so let me also
mention --

A. Yes.

Q. -- she has to be able to pick up what
we say audibly. And so if we nod and don't say
"yes" or "no," she'll have a problem.

Jerry, is there any health issues that
you have that might cause you problems during the
course of the deposition that we ought to be
aware of?

A. I don't -- no, I don't think so.

Q. Okay. If you get to where you want to
take a break for any reason, restroom or to visit
with Steve, or any other personal purpose, just
let me know and we'll go off the record and take
a break.

A. Okay.

Q. I'll try to ask you a question as clear

Page 7

A. Jerry Beus. Wood Canyon, Soda Springs,
Idaho.

Q. Jerry, since we have three Beuses
involved in this and three different depositions,
is it okay if I just call you "Jerry"?

A. Yes.

Q. Okay. What's your age, Jerry?

A. Sixty.

Q. And your date of birth?

A. [REDACTED]

Q. Have you had your deposition taken
before?

A. No.

Q. This will be your first one?

A. Yup.

Q. I'm sure Mr. Smith explained to you
generally what the deposition's all about?

A. Yes.

Q. So you have a basic understanding that
we're just going to find out what you might know
about the facts to that would be relevant to some
of the issues in this litigation?

A. Yes.

Q. And during the course of the deposition
here, I'll basically be asking the questions, and

Page 6

as I can. Sometimes I don't ask good questions.
So if you don't understand the question, don't
hesitate to ask me to rephrase it or repeat it.

A. Okay.

Q. Sometimes I'll ask you some questions
that may ask for you to maybe give an estimate of
a date or a time. Feel free to do that if you
can. I would ask that you don't try to speculate
or guess. So if you really don't know or don't
recall, that's fine, too; you can answer "I don't
recall" or "I don't remember."

Can I ask you a few questions about
your educational background?

A. Yes.

Q. Would you just start with where you
went to high school and go from there?

A. Soda Springs, Idaho. I went to Heavy
Equipment Trade School. And then was drafted,
come back and went to welding school at ISU.

Q. And you graduated from Soda Springs
High School in what --

A. I got a GED in the Army.

Q. Okay. And what period of time did you
serve in the Army?

A. 1968 till 1970, Vietnam.

Page 8

2 (Pages 5 to 8)

1 Q. And then was the trade school you
2 mentioned after you got out of the Army?

3 A. Before.

4 Q. What trade school did you go to?

5 A. Up in Weiser. It was Idaho Heavy
6 Equipment Operator School.

7 Q. And was that a different school than
8 the welding school --

9 A. Yes.

10 Q. -- you went to?

11 A. Yes.

12 Q. And what was the -- how long were you
13 in the trade school?

14 A. Three months.

15 Q. What trade were you studying there?

16 A. Heavy equipment operation, dozers,
17 scraper, and crane.

18 Q. And did you complete that school?

19 A. Yes.

20 Q. And then you went to a welding program
21 after that?

22 A. Yes.

23 MR. SMITH: Let him finish his
24 question.

25 THE WITNESS: Excuse me.

Page 9

1 Construction

2 A. Oh, I didn't work for them for -- I
3 worked for BH&I, which was Glen Irving and
4 maintenance in the Monsanto. And then I worked
5 for Gervol [phonetic] about five, six years. And
6 then I worked for Washington Construction and
7 Mullen Crane.

8 Q. Was all that of work heavy equipment
9 operator?

10 A. Yes. Well, the -- there was
11 maintenance -- welding maintenance in BH&I, and
12 then the rest of it was heavy equipment.

13 Q. Would it be accurate to say, Jerry,
14 that you grew up on a farm, then, Wood Canyon,
15 your father's place?

16 A. Yes.

17 Q. And did you work there growing up on
18 the farm?

19 A. Yes.

20 Q. And did typical farm and ranch labor
21 with livestock and equipment?

22 A. Yes.

23 Q. And during the period of time that you
24 were working these other jobs, for Washington
25 Construction and Gervol and Mullen, was that --

Page 11

1 Q. (BY MR. BUDGE) What year was that that
2 you went to welding school?

3 A. I'm not sure.

4 Q. And how long of a period --

5 A. I believe 1967. I believe.

6 Q. Okay. And how long were you in the
7 welding trade school?

8 A. I was night school, and I went about a
9 year and a half.

10 Q. Okay. So you were in the Army
11 immediately out of high school?

12 A. Pretty close, yes.

13 Q. And then when you returned from the
14 Army, could you just give me a brief summary of
15 your work experience from that period of time
16 going forward?

17 A. Say that again.

18 Q. Yes. After you got back from the Army,
19 you had various jobs over a period of time?

20 A. Yes. I worked the first year up --
21 helped my dad on the farm and ranch. And then I
22 got -- worked some construction and helped him on
23 the weekends and nights.

24 Q. And what about -- how long of a period
25 of time were you working for Washington

Page 10

1 were those jobs in and around Soda Springs?

2 A. Yes.

3 Q. And were you also helping your dad on
4 the farm and ranch during that period of time?

5 A. Yes, I was.

6 Q. Okay. At some point in time did you
7 begin to work full-time on the farm?

8 A. Yes, I did.

9 Q. When did that begin?

10 A. I'm not exactly sure the date. I
11 believe it was around 1974.

12 Q. So your dad would still been alive at
13 that point?

14 A. Yes, he was.

15 Q. Were you working full-time for him as
16 an employee, or were you leasing the farm and
17 operating it yourself?

18 A. The first part of it, I -- I never did
19 work full-time for him after the first year out
20 of Vietnam. I just part-time helped him on
21 harvest and whatever. But I was leasing --
22 Hopkins and Christman had had it, and I was
23 leasing it, small acreage from him. And then
24 when their lease expired -- well, it didn't
25 expire; he took it away from them, and asked me

Page 12

3 (Pages 9 to 12)

1 if I wanted it, and then I leased it.
 2 Q. Okay. So if I understand correctly
 3 from some of the paperwork we've seen here, your
 4 dad passed away January 5th of 1986?
 5 A. Yes.
 6 Q. So there was a period of time prior to
 7 his death that you were farming and ranching
 8 yourself and not working any of the other
 9 equipment jobs that you --
 10 A. Oh, no. I had to -- I had to keep a
 11 job. In the winters, I went to work on the oil
 12 rigs or wherever I could find work, because of
 13 the farm wasn't --
 14 Q. When you said "Hopkins and Christman,"
 15 are they other landowners that had farm land --
 16 A. Yes.
 17 Q. -- in the Soda Springs area?
 18 A. Yes, they were our neighbors.
 19 Q. And so you arranged to lease some of
 20 the property from them that you operated?
 21 A. No. I leased it from my dad, because
 22 my dad took the lease away from them.
 23 Q. I see. So you were referring to your
 24 dad's ranch that you leased prior to his death
 25 for a period of time?

Page 13

1 A. Yeah. Yes.
 2 Q. And what were the lease arrangements
 3 that you had made with your father? Did you have
 4 a cash lease or a crop share or what was the --
 5 A. It was a crop share, one-third,
 6 two-thirds, and he paid two-thirds of the
 7 expenses.
 8 Q. Okay. And if I understand your
 9 testimony, that started somewhere in the range of
 10 -- in the time frame of --
 11 A. 1978.
 12 Q. -- 1974 -- '78?
 13 A. For the full, yes.
 14 Q. And then that continued up until his
 15 death?
 16 A. Yes.
 17 Q. Do you have any experience acting as a
 18 personal representative of an estate?
 19 A. Do I?
 20 Q. Yes. Have you ever been a personal
 21 representative of somebody's estate?
 22 A. No.
 23 Q. Have you ever been a trustee of
 24 someone's trust?
 25 A. No.

Page 14

1 Q. And have you been designated as a
 2 guardian of a person or a conservator of person's
 3 estate at any time during your life's
 4 experiences?
 5 A. No.
 6 Q. You're currently a single man?
 7 A. Yes.
 8 Q. Have you been married before?
 9 A. Yes.
 10 Q. And more than once?
 11 A. No.
 12 Q. What was the marriage that you had
 13 before? Whom were you married, and what was the
 14 time period?
 15 A. Her maiden name was Cathy Rigel. And
 16 the time period would have been in '73 to '74.
 17 Q. And do you have any children?
 18 A. Yes.
 19 Q. How many?
 20 A. Two.
 21 Q. And any of those children help you on
 22 the farm operations?
 23 A. My son helped me at times, yes.
 24 Q. What are their names?
 25 A. Jade Albert Beus.

Page 15

1 Q. Did you say "Jay" or "Jade"?
 2 A. J-a-d-e, Jade.
 3 Q. And how old is he approximately?
 4 A. I think he was born in -- he's
 5 approximately -- let me think -- 38, something
 6 like that.
 7 Q. Where does he live?
 8 A. Jackson Hole, Wyoming.
 9 Q. And your other child?
 10 A. Daughter, Angel Christine. She's
 11 14 months younger than Jade.
 12 Q. And where does she live?
 13 A. Reno, Nevada. Well, she lives in
 14 Bullhead City, Arizona, right now, but she's
 15 moving this month.
 16 Q. And has she ever worked with you on
 17 your farm operation?
 18 A. No.
 19 Q. You said that Jade helped you out.
 20 What were those circumstances?
 21 A. In the summer.
 22 Q. When did that occur?
 23 A. When he was going to school, he'd --
 24 I'd -- he was -- his mother had custody. And
 25 he'd come up and move sprinkler pipe and whatever

Page 16

4 (Pages 13 to 16)

1 I had going on, help us with main lines and
2 stuff like that, cleanup, labor work.
3 Q. And that was during the summer while he
4 was going to school?
5 A. Right.
6 Q. Was that high school or college?
7 A. Yes, high school.
8 Q. High school.
9 Your father's name was Lynn Beus?
10 A. Yes.
11 Q. And your mother was Marjorie Beus?
12 A. Marjorie Seely -- yeah, Marjorie Ayers
13 was her maiden name.
14 Q. "Ayers" was her maiden name?
15 A. Yeah.
16 Q. So that's how you're related, then, to
17 the realtor, Lisa Ayers --
18 A. Right.
19 Q. -- through your mother?
20 I think we discussed this earlier, your
21 father passed was January 5th of 1986?
22 A. Yes.
23 Q. And so then your mother, Marjorie Beus,
24 remarried?
25 A. No. My mother was remarried. My -- my
Page 17

1 father and mother got divorced.
2 Q. Okay.
3 A. And my stepmother --
4 Q. When was your father and mother
5 divorced approximately?
6 A. Oh, probably 1954, '55, I don't know.
7 Q. You were a young -- young boy at the
8 time?
9 A. Yes.
10 Q. So your father then remarried Beth
11 Beus?
12 A. Beth Gummersall is her maiden name.
13 Q. Do you know approximately when they
14 were married?
15 A. No, I don't.
16 Q. And your mother then remarried Byron
17 Seely?
18 A. No. She remarried two or three other
19 guys.
20 Q. Okay. And the children of your
21 parents, Lynn and Marjorie Beus, during their
22 marriage were you and your brothers, Doug and
23 Dallas, who are here?
24 A. We were what? Present?
25 Q. Your parents, Lynn Beus and Marjorie
Page 18

1 Beus, had children, yourself, and Doug, and
2 Dallas; is that correct?
3 A. Four children.
4 Q. Who's the fourth?
5 A. I had a sister that was killed.
6 Q. Okay. What was her name?
7 A. Marcia, M-a-r-c-i-a, it's spelled.
8 Q. Living children, then, are you, Doug,
9 and Dallas?
10 A. Yes.
11 Q. And then when your father, Lynn,
12 remarried Beth; is that correct?
13 A. Yes.
14 Q. And then Lynn and Beth Beus then had
15 two daughters, Karen Schrand and LaNae Call?
16 A. Beth already had two daughters when
17 they were married.
18 Q. So Karen Schrand and LaNae Call were
19 Beth's daughters of a prior marriage?
20 A. Prior marriage. Her name was -- her
21 last name was Moyer.
22 Q. And Beth Beus passed away June 10th of
23 2008; would that be correct?
24 A. I believe you're correct.
25 Q. Jerry, you had some various documents
Page 19

1 that you were asked to produce as a part of your
2 deposition notice. And let's go off the record
3 for just a moment and see what it that you have,
4 and then we'll see how to handle it.
5 (A discussion was held off the record.)
6 MR. BUDGE: Let's go back on the
7 record.
8 And just for the record, during the
9 course of the break, we discussed some of the
10 documents that Jerry Beus has brought here to the
11 deposition. And with respect to Item 1, which
12 had to do with documents and files and records
13 pertaining to his lease of the Lynn G. Beus Trust
14 property and his operation/management of the
15 farm.
16 Q. (BY MR. BUDGE) Jerry, it's my
17 understanding that the various leases that you
18 had with the trust over the years are those that
19 have already been produced and are copies of --
20 and are exhibits to the complaint that we'll talk
21 about later. You don't have any other leases --
22 A. No.
23 Q. -- with the trust?
24 And on Item 2 that requested financial
25 statements, bank statements, tax returns,
Page 20

1 checkbook ledgers, and the like, that's
2 information you're having your accountant work on
3 getting together?

4 A. Yeah, some of it. I don't know as I've
5 got all the complete records. But clear back
6 till 1986, I -- I've got some, and he's going
7 through that.

8 Q. Okay. And when you referred to your
9 accountant, are you referring to Max Hemmert?

10 A. He's not really my -- well, my
11 accountant; he is my tax man.

12 Q. Okay. What do you mean by that?

13 A. I mean he does my taxes.

14 Q. Max Hemmert, okay. And how long has he
15 done that?

16 A. Oh, I would estimate 12 years. Before
17 him, I had Mark Conlin.

18 THE COURT REPORTER: Conman?

19 THE WITNESS: Conlin, C-o-n-l-i-n.

20 Q. (BY MR. BUDGE) So when Mr. Hemmert
21 prepared your tax return, you typically just take
22 to him all of your records of income and expense
23 and operation of the farm and ranch, and he
24 prepares the return based on what you supply him?

25 A. Yes.

Page 21

1 regarding improvements to the trust property that
2 were made pursuant to any of the lease
3 agreements, any receipts and checks and the like,
4 and you indicated you had some information
5 pertaining to that with you?

6 A. No, I -- I don't know.

7 -- MR. SMITH: Well, you have this.

8 THE WITNESS: Oh.

9 MR. SMITH: Which I think are
10 improvements.

11 Q. (BY MR. BUDGE) Do you have some
12 records or receipts elsewhere that --

13 A. This is --

14 Q. -- isn't with you?

15 A. I have -- if I can find them -- how far
16 back are you talking?

17 Q. Well, let's say in the last -- we asked
18 for 1986 on, which was when you started to lease
19 from the trust.

20 A. Uh-huh. I don't -- I'm not sure I got
21 all of them records, no.

22 Q. Whatever you have that would reflect
23 money that you expended for improvements on the
24 farm once you leased it from the trust, would
25 they be reflected by the tax return?

Page 23

1 Q. So whatever financial information you
2 may have pertaining to your farm and ranch
3 operation would be reflected on the tax returns
4 that he prepares for you year to year?

5 A. I suppose it is.

6 Q. In other words, the tax returns he
7 prepares would be your personal returns, and you
8 run your farm and ranch operations through your
9 personal accounts and reflect it on your personal
10 returns?

11 A. Yes.

12 Q. You don't have a separate corporation
13 or partnership that you run any business through?

14 A. No, I don't.

15 Q. Item 3 on your deposition notice had
16 asked for correspondence and notes and documents
17 pertaining to any communications or business
18 dealings with the trustee acting as trustee of
19 the trust. And I think we identified during the
20 break that you don't really have any files or
21 records that contain correspondence other than
22 some of them have gone on in the recent months
23 since this dispute arose?

24 A. Yes.

25 Q. And on Item 4, we'd request information

Page 22

1 A. No. No, not in the -- a lot of that
2 stuff I've wrote off. You could write off so
3 much a year, and a lot of that stuff I just
4 lopped in as --

5 Q. An expense?

6 A. -- as expense, you know, repairs,
7 things like that.

8 Q. But to the extent that you may have
9 made improvements to the farm property, that
10 could have been depreciated or you could have
11 maybe written off as an expense, if it was
12 written off as an expense. Would it be reflected
13 as an expense in the records that you delivered
14 to your tax man, Mr. Hemmert, and that he would
15 have reflected it as one of your operating
16 expenses on the tax returns?

17 A. I -- I don't -- I really don't know.

18 Q. Okay. Let me ask it a different way.
19 Would there be money that you spent for
20 improvements on the farm that you would not have
21 provided those canceled checks and things to
22 Mr. Hemmert so he could reflect that on your
23 return, either as an expense that would be a
24 deduction against income or as an item of capital
25 improvement that you may want to depreciate?

Page 24

6 (Pages 21 to 24)

1 A. I -- I don't know how he done it. And
 2 I really don't -- you know, I'm not familiar with
 3 that. I don't know.
 4 MR. SMITH: I'll tell you what we'll
 5 do, we'll get all of his -- what he -- all the
 6 documents he has related to expenses and
 7 improvements, canceled checks. And when we do
 8 Hemmert on Thursday, we can ask him what he has,
 9 because I think there may be some duplication
 10 there. That's my gut feeling.
 11 MR. BUDGE: Great. I understand.
 12 MR. SMITH: When you go home today,
 13 gather up all the financial documents that you
 14 have related to improvements you did on the
 15 property.
 16 THE WITNESS: Okay.
 17 MR. SMITH: That's -- and we'll figure
 18 out -- so that we can get them in advance of
 19 Thursday, when we talk to Hemmert. If you -- if
 20 you can; just do what you can.
 21 THE WITNESS: From 19 --
 22 MR. SMITH: Back to 1986, if you can
 23 find them. I suspect you don't have a lot of the
 24 stuff, but what you do have.
 25 THE WITNESS: Okay.

Page 25

1 MR. SMITH: Okay.
 2 MR. BUDGE: That'd be fine. Thank you,
 3 Counsel.
 4 Q. (BY MR. BUDGE) Then Item 6 was
 5 documents pertaining to your various loans to
 6 Ireland Bank and DBL. And I think you indicated
 7 you didn't have any records on that?
 8 A. No. You've got them.
 9 Q. Okay. Thank you.
 10 Before we ask you about this particular
 11 case, Jerry, let me ask you: Have you been
 12 involved in any other litigation historically of
 13 any type?
 14 A. As in what?
 15 Q. Any kind of lawsuit. I don't care
 16 about traffic tickets and minor stuff like that.
 17 But have you been involved as a party to a
 18 lawsuit prior to this one?
 19 A. Well, no.
 20 Q. Okay. And are you presently involved
 21 in any other lawsuits besides this one?
 22 A. Yes.
 23 Q. And what other ones are you involved
 24 in?
 25 A. I think you're aware of that,

Page 26

1 Georgetown Irrigation Company.
 2 Q. Okay. So that's the suit that you
 3 recently brought against Georgetown Irrigation
 4 Company?
 5 A. Yes.
 6 Q. And that does arise out of a lease of
 7 some property that you were making some
 8 improvements on?
 9 A. I don't -- I don't know for sure.
 10 Would you rephrase that?
 11 Q. Yeah. Let me rephrase it. Let me just
 12 ask you: The parties in that lawsuit, you're the
 13 plaintiff; you brought a suit?
 14 A. Right.
 15 Q. And you brought a suit against
 16 Georgetown Irrigation Company?
 17 A. Yes, I did.
 18 Q. And does that arise out of some stuff
 19 that Georgetown Irrigation Company did to remove
 20 a pipe that you installed and fill in a trench
 21 that you claim was wrong?
 22 A. Yes.
 23 Q. And -- and on whose property?
 24 A. Pauline Stoddard.
 25 Q. Okay. And who's Pauline Stoddard? Is

Page 27

1 she the landowner?
 2 A. Yes.
 3 Q. And that was property you leased near
 4 Georgetown?
 5 A. Yes.
 6 Q. And where is that property located?
 7 A. In Bear Lake County.
 8 Q. And would that be to the north and west
 9 of Georgetown?
 10 A. Yeah.
 11 Q. And how long have you leased that from
 12 Pauline Stoddard?
 13 A. Four or five years, something in that.
 14 Q. What type of operation is that?
 15 A. Farming and ranching, pasture and
 16 farming.
 17 Q. Okay. You raise crops and run
 18 livestock?
 19 A. I -- yes.
 20 Q. And do you lease that property from
 21 her?
 22 A. Yes.
 23 Q. Is it a written lease agreement?
 24 A. Yes.
 25 Q. Do you have a copy of that agreement

Page 28

7 (Pages 25 to 28)

1 with you?
2 A. No.
3 Q. But you have it among your records?
4 A. I'm sure I do. Does that pertain to
5 this?
6 Q. Is it a -- is it a cash or a --
7 A. It's a cash lease.
8 Q. -- crop share?
9 And are you current or in arrears on
10 your rent?
11 A. Current.
12 Q. The improvements that you made -- just
13 -- I don't want to get too far into this -- you
14 made some improvements on that particular
15 Stoddard property?
16 MR. SMITH: Before you answer. I just
17 want to interpose an objection since he is
18 represented by separate counsel. I'll let you go
19 a little ways, but get too detailed, you know;
20 it's treading on somebody else's ground.
21 MR. BUDGE: Understand.
22 MR. SMITH: I don't represent him in
23 that case.
24 Okay. Go ahead and answer that
25 question.

Page 29

1 THE WITNESS: Rephrase that, please.
2 Q. (BY MR. BUDGE) Yeah. What I just
3 wanted to talk about is there is -- there was
4 some improvements that you made on the Stoddard
5 property in the form of putting a pipe in --
6 A. Yes.
7 Q. -- correct?
8 And those improvements, how were they
9 being funded? Was that funded from your basic
10 farm operation?
11 A. Well, Pauline paid for -- for some of
12 them, and I paid for some.
13 Q. So if you paid for improvements on that
14 leased property, would that also be reflected on
15 the tax returns that you have Mr. Hemmert --
16 A. No. No.
17 Q. Where would that expenditure be
18 reflected?
19 A. I -- I guess in -- it was in, what,
20 2008. I suppose it would be in my taxes, you
21 know, in my personal taxes, it would be.
22 Q. And I'm not trying to make a big deal
23 out of it. But you leased property from the
24 trust, and this is just some other farmland that
25 you leased?

Page 30

1 A. Right.
2 Q. And you ended up in a dispute over some
3 improvements, and that gave rise to another
4 lawsuit?
5 A. Yes.
6 Q. But as far as your lease of that
7 Pauline Stoddard property, you simply run that as
8 a part of your overall farm operation?
9 A. Pretty much, yes.
10 Q. Okay. Jerry, as I reviewed some of the
11 documents here pertaining to your father and
12 mother's estate planning and some of the leases,
13 I see the name of "Max Whittier" shows up in a
14 number of documents. And he ends up being named
15 as the personal representative of your father's
16 estate in his will; correct?
17 A. Yes.
18 Q. And he was also named as the trustee of
19 the trust?
20 A. Yes.
21 Q. So was Max Whittier your father's
22 attorney for some period of time?
23 A. Yes.
24 Q. And when did you first become
25 acquainted with Max Whittier?

Page 31

1 A. I -- I can't recall. I knew he was my
2 father's attorney. And I -- I suspect -- well,
3 my -- my -- I guess really acquainted with him
4 was probably when -- I knew him by name; I knew
5 him by sight, but I didn't become acquainted with
6 him until -- basically until, I guess, my dad
7 died.
8 Q. Okay. So you weren't meeting with your
9 father and Mr. Whittier in conjunction with when
10 your dad prepared his will?
11 A. I took my dad down to Mr. Whittier's
12 office. And they invited me in, and I said, "I
13 don't want to even know. That's your business."
14 Q. You weren't really involved, then,
15 in --
16 A. I never heard a word, never seen a
17 word, never seen the will.
18 MR. SMITH: Let him finish. You guys
19 are talking, and the court reporter can't -- the
20 court reporter can't take down both of you
21 talking at once.
22 THE WITNESS: Okay.
23 Q. (BY MR. BUDGE) Did Mr. Max Whittier
24 personally represent you on any legal work?
25 A. Not that I can recall.

Page 32

8 (Pages 29 to 32)

1 Q. And then as I reviewed the documents,
2 apparently Max died at some point in time, and
3 his son, who was in practice with him, took over
4 and became --

5 A. Yes.

6 Q. -- involved?

7 A. Yes.

8 Q. And so Monte acted as your father's
9 attorney for a period of time?

10 A. I guess he did. I don't know.

11 Q. Would that have been after your father
12 died --

13 A. Yes.

14 Q. -- or before?

15 Did Monte Whittier ever represent you
16 personally on any legal matters?

17 A. I don't recall him ever representing
18 me, no.

19 Q. I noted that Monte Whittier showed up
20 as the trustee on some of the later leases?

21 A. Yes.

22 Q. Was it your understanding that he took
23 over and became the successor trustee after his
24 father, Monte [sic] Whittier, passed away?

25 A. That was my understanding, yeah.

Page 33

1 it was really none of my business. I didn't know
2 what was --

3 Q. And then on some of the later leases, I
4 see that John Souza was acting as the trustee of
5 the trust?

6 A. Yes.

7 Q. And when did you first become
8 acquainted with John Souza?

9 A. Oh, I guess probably when he took the
10 trustee job.

11 Q. You didn't have any legal dealings with
12 him prior to that --

13 A. No.

14 Q. -- time?

15 A. No.

16 Q. Do you know what the circumstances were
17 that Monte Whittier ceased to be trustee and John
18 Souza then became trustee?

19 A. I have no idea.

20 Q. Okay. And has John Souza ever provided
21 you with legal represent --

22 A. Other than --

23 Q. Wait just a minute, Jerry. You've got
24 to let me finish. Sorry, I'm sometimes slow on
25 my question. But let me methodically ask it.

Page 35

1 Q. Do you know how that came about?

2 A. Max died.

3 Q. And were the trust's beneficiaries,
4 Beth or yourself or Doug or Dallas, were they
5 ever consulted with?

6 A. Beth was, yes.

7 Q. So basically Beth consulted with all of
8 you about Monte taking over after Max died as
9 trustee?

10 A. I don't know if -- she didn't need to
11 consult me. Monte just was -- as far as I knew,
12 it was automatic or something like that, you
13 know, that was, I believe, in the will or in the
14 trust.

15 Q. Now, I didn't see him named -- excuse
16 me, go ahead.

17 A. Max -- I think it was in the trust. I
18 don't know. But Max could appoint, if he got
19 unable to or died, he could appoint or --

20 Q. You're not aware of any formal
21 proceedings pursuant to which Monte Whittier
22 became the trustee other than he just
23 automatically took over after Max died?

24 A. I'm not aware of any, no. Beth
25 mentioned once that -- that Monte was going to --

Page 34

1 So what -- did John Souza ever do any
2 legal work for you personally during this period
3 of time that he was acting as trustee of the
4 trust?

5 A. Yes. He drew up a will for me after I
6 had a heart attack.

7 Q. Okay. Do you know when that was?

8 A. I suspect that was in 2003 or '4,
9 something like that.

10 Q. Did he do any legal work other than a
11 will for you?

12 A. No.

13 Q. Okay.

14 A. Oh, I had him look into some water
15 rights on the ranch. And that wasn't for me; it
16 was more for the trust.

17 Q. Some of the documents that you produced
18 here that we haven't yet marked as an exhibit is
19 a ledger that shows apparently some checks that
20 were paid to Mr. Souza in 2006 and 2007 which
21 totaled \$4,388.52. Were those the water right
22 works that you were employing him to do work for?

23 A. And trustee -- you know, it was just
24 whatever he billed me for the -- whatever he done
25 for the trust and water rights. He was -- he was

Page 36

1 working on the water rights for the trust, too.
2 Q. Okay. So basically this would be water
3 rights that pertain to the trust ranch that you
4 were leasing?
5 A. I -- yes.
6 Q. And so Mr. Souza was employed to do
7 some work relative to those water rights, and he
8 billed you, and you paid him?
9 A. Yes.
10 Q. There's another statement that you've
11 produced here dated September 30th of 2008 that
12 reflect various charges in, looks like, August
13 and September of 2008 to you personally. Can you
14 tell me what that legal work was about?
15 A. I would suspect this legal work was
16 John's involvement in the trust as trustee. It
17 looks to me like it was probably -- most of it
18 probably correspondence from me. I think
19 there's --
20 Q. I noticed on these statements that
21 we're referring to here the bill was sent to you,
22 Jerry Beus, from John Souza. And it doesn't make
23 reference to whether he was working for the trust
24 or for you. If he bills you and you paid it, was
25 it your understanding that he was working for you

Page 37

1 or for the trust?
2 A. He's -- he's billed me just like that
3 for the trust since day one. The bill come to me
4 because I was paying the bills.
5 MR. BUDGE: Can we just make these as
6 an exhibit? We'll mark it as Exhibit 23, would
7 be the next one. And we'll provide a copy to you
8 so Jerry can keep this in his records when we
9 have a break.
10 Q. (BY MR. BUDGE) Jerry, just for the
11 record, these billings that we've discussed have
12 been marked as Exhibit 23. And you mentioned in
13 your last answer that this is the same as had
14 happened in the past. So by that, did you mean
15 that over the years it was common for John Souza
16 to send you bills for legal work relating to the
17 trust property?
18 A. No. It was part of the lease.
19 Q. Part of the lease in what way?
20 A. I had to pay all trustee fees and
21 taxes, all that stuff.
22 Q. Okay. We'll look at that when we get
23 to the leases. Your recollection, then, there's
24 some specific language in the lease agreement
25 that says you have to pay any legal fees incurred

Page 38

1 by the trustee?
2 A. Yes, that's -- I believe that's
3 correct.
4 Q. Or you just considered that --
5 A. Pardon?
6 Q. Did you consider yourself to be a
7 personal friend of John Souza?
8 A. No.
9 Q. Did he ever come up to the ranch to
10 hunt or fish or anything like that?
11 A. No. He come to the ranch one time to
12 look and see where it was and how it was being --
13 Q. What about Max Whittier and Monte
14 Whittier? Did you consider them personal
15 friends? Did they come to the ranch to hunt or
16 fish?
17 A. They were my father's personal friends.
18 Q. Do you know what the circumstances were
19 that caused John Souza to take over as the
20 trustee from Monte Whittier?
21 A. I think Monte got sick or something and
22 left the law firm.
23 Q. There's not any --
24 A. I don't know. I don't know. No, I
25 don't.

Page 39

1 Q. You're not aware of any court
2 proceedings that were initiated --
3 A. No.
4 Q. -- where one trustee got replaced by
5 another?
6 A. No, I'm not aware. Beth -- Beth just
7 told me that Monte was -- was leaving the trust
8 and John was taking over. Beth didn't -- I
9 didn't care for Monte very well. I don't know
10 what the deal was, but . . .
11 Q. So basically your understanding, this
12 was primarily handled internally within the law
13 firm that it went from Max when he died to Monte,
14 and then when Monte got sick, it went to John?
15 A. Well, I believe it states in the trust
16 that -- that they -- when they're through, they
17 turn it down to somebody else.
18 Q. Okay.
19 A. Doesn't it? You've --
20 Q. So your understanding was probably then
21 that Monte took over, and he just elected or
22 exercised the authority he had as trustee to
23 designate John as his successor?
24 A. That's basically -- I didn't research
25 any of that when it was being done.

Page 40

10 (Pages 37 to 40)

1 Q. In the course of your dealings with
2 John Souza that gave rise to the bills that he
3 sent you, which you paid, did you consider him to
4 be representing you, or did you consider that he
5 was representing the trust and that you were
6 paying trust bills?

7 A. I was paying trust bills.

8 Q. So you considered him to be the trust
9 attorney, not Jerry Beus's attorney?

10 A. Exactly.

11 Q. Did you ever have independent counsel
12 through your own attorney in the course of your
13 dealings with the trust over the years when you
14 entered into various lease agreement?

15 A. Independent counsel as in a different
16 attorney or something?

17 Q. Yes.

18 A. No, I didn't.

19 Q. Did you rely on any legal advice that
20 was provided by John Souza?

21 A. No. He never gave me any.

22 Q. And initially in this case, after it
23 was filed, Clyde Nelson, attorney in Soda Springs
24 was representing you?

25 A. Right.

Page 41

1 Q. And then did you -- did he withdraw, or
2 did you choose to terminate him?

3 A. He pretty well withdrew.

4 Q. Okay. So you had some misunderstanding
5 between the two of you, and he said he didn't
6 want to be involved?

7 A. Right. He could see it drawing out,
8 and he wasn't going to finance like the Budge law
9 firm does. He didn't think that he had the money
10 to do it and that. I didn't. So he drew a line
11 and said, you know, if you're -- if you're going
12 up against Budge law firm, you better have big
13 pockets, 'cause they'll draw it out.

14 Q. We lawyers are known to do that.

15 A. Yup. Especially that one.

16 Q. All right. In this binder, Jerry,
17 that's in front of you, is a list of the
18 exhibits. And if you want to look at the front
19 of it just to familiarize yourself. The list of
20 exhibits are basically the exact same ones that
21 are attached to the complaint down to about -- I
22 believe about No. 17 or 18. And then where those
23 were marked as Exhibits A, B, C, and so on to the
24 complaint, we just remarked them as Exhibits 1, 2
25 and 3.

Page 42

1 A. Which one do you want, 17 or 18?

2 Q. No. I'm just giving you an overview so
3 you can find them. We're just going to walk
4 through them from top to bottom.

5 A. Okay.

6 Q. And the tabs, if you want to turn to
7 Exhibit 1, you'll see is a copy of your father's
8 will. Do you recognize that?

9 A. Yes. Yes.

10 Q. And then on most of the exhibits that
11 you'll see here, there is a stamped exhibit on
12 the bottom. This one shows Exhibit A.

13 A. Mm-hmm.

14 Q. And that's just so you can refresh your
15 memory. These are the same exhibits that we
16 copied and attached to the complaint that you
17 probably reviewed. Have you had a chance to
18 review the complaint and the exhibits?

19 A. Yes.

20 Q. So do you recognize Exhibit 1 as your
21 father's Last Will and Testament, dated June 27th
22 of 1983?

23 A. Yes, it looks just like it. I haven't
24 checked it word for word.

25 Q. And you'll note on page 6 it was

Page 43

1 notarized by, I believe, Max Whittier. Is it
2 your understanding that that was the attorney
3 that prepared the will and that your dad was
4 consulting with regarding his estate plan?

5 A. My -- it's -- this copy is sort of -- I
6 can't see whose signature is there. I believe
7 it's probably notarized by Monte or Max. I don't
8 know.

9 Q. Okay. You wouldn't have been present
10 when it was signed?

11 A. No.

12 Q. And I think you said earlier you
13 weren't present when he discussed his estate plan
14 with his attorney?

15 A. No. No. It was none of my business.
16 It made me uncomfortable. It was his decision.

17 Q. When did you first see this will?

18 A. When my father died.

19 Q. And that would have been I think
20 January 5th of 1986?

21 A. Yes.

22 Q. And at that point were you leasing the
23 ranch?

24 A. Yes.

25 Q. And were you living on the property?

Page 44

11 (Pages 41 to 44)

1 A. Yes.
2 Q. And what was your relationship with
3 your father at the time?
4 A. Relationship as?
5 Q. Well, were you getting long okay with
6 your father?
7 A. Oh, yes.
8 Q. No unusual problems there?
9 A. No.
10 Q. And your relationship with Beth?
11 A. It was good.
12 Q. Okay. And the -- at that point in time
13 -- I'm still referring to 1986 -- would it be
14 accurate to say that you had a good relationship
15 with your brothers, Doug and Dallas?
16 A. Yes, I -- I would think so.
17 Q. If you turn to page 2 of the will, it
18 provides at the top there that Max Whittier is
19 appointed personal representative of the will and
20 trustee of the trust. You wouldn't have any
21 knowledge as to why your dad did that in his
22 will?
23 A. Other than he didn't want us fighting
24 over it. I suspect that was --
25 Q. And how do you know that? Why do you

Page 45

1 make that statement?
2 A. Well, it's just common sense.
3 Q. And not something he told you?
4 A. No.
5 Q. Did you have reason -- would he have
6 had reason to believe that the three of you may
7 have been fighting over the ranch?
8 A. Not -- not to my knowledge. He never
9 said anything like that, no.
10 Q. There wasn't any known problems or
11 jealousies that existed between the boys by
12 reason of the fact that you were home running the
13 ranch and they were not?
14 A. Not to my knowledge.
15 Q. The will also states on page 2 that if
16 Max Whittier were "unwilling or unable to act as
17 personal representative, then I appoint my
18 beloved son, Dallas Beus, to be representative to
19 serve without bond."
20 Do you have any knowledge or opinion as
21 to why your father would have named Dallas as the
22 alternate personal representative?
23 A. No, I don't have any clue.
24 Q. Turn to page 4, if you would there.
25 Let's see. Excuse me, I'm sorry, Jerry, page 2,

Page 46

1 would be paragraph 4, that talked about debts and
2 taxes and the estate expenses were to be paid
3 first.
4 A. Page 2?
5 Q. Yeah. At the top of page 2, there's a
6 paragraph that's named "Fourth: Debts, taxes,
7 and estate expenses." Do you see that paragraph?
8 A. Mm-hmm.
9 Q. It basically says that those debts and
10 taxes and expenses were to be paid first at
11 death. The question I had for you is: We did
12 some title report information obtained from
13 Caribou Title that indicated that there were not
14 any mortgages against the ranch property owned by
15 your father at the time of his death. Would you
16 agree with that, or do you have any reason --
17 A. No.
18 Q. -- to dispute it?
19 A. No, I don't agree with it. And, yes, I
20 have a reason to dispute it.
21 Q. Okay. Explain what you understand the
22 facts to be.
23 A. My recollection, I was paying to the
24 trustee, and my understanding was that part of
25 that payment was going to Federal Land Bank

Page 47

1 payment to pay off land mortgage.
2 Q. Okay. You said that your payment to
3 the trustee. There wasn't a trustee in place
4 until after your father died; correct?
5 A. Oh.
6 Q. Did you just misspeak?
7 A. Maybe I did. You said in 1986?
8 Q. Before your dad died or at the time of
9 his death, there was not a trust in place until
10 he died?
11 A. Right.
12 Q. My question was, at the time he died,
13 we had information from the title company saying
14 that whatever mortgage against the property had
15 already been released and paid. So my question
16 was: Did you have some different information
17 that would indicate on the date of your father's
18 death he had a mortgage against the property?
19 A. Yes.
20 Q. Okay. Now answer it again based on
21 that. What -- what --
22 A. He had a mortgage at Federal Land Bank
23 on the land.
24 Q. And so when you were leasing the
25 property from your dad during his life, you

Page 48

1 understood part of the payment went to Federal
2 Land Bank?
3 A. Yes.
4 Q. Okay. Did you ever make any direct
5 payments to Federal Land Bank?
6 A. No.
7 Q. Do you have any records indicating
8 whether or not that Federal Land Bank mortgage
9 had been released at the time your father passed
10 away or sometime prior to that?
11 A. No, I don't have any -- that was his --
12 his business. I didn't.
13 Q. Okay. So your belief that there may
14 have been a Federal Land Bank mortgage in place
15 was simply because there was some lease payments
16 that you'd made over previous years that you
17 understood your dad might have taken and paid to
18 Federal Land Bank?
19 A. That, and Max told me that there was a
20 payment every year when we made the lease that
21 had to be covered.
22 THE WITNESS: Excuse me for just a
23 minute.
24 MR. DOUG BEUS: There's no coffee.
25 (Mr. Cahoon left the room.)

Page 49

1 Q. (BY MR. BUDGE) Have you had any
2 communications with anyone at Federal Land Bank
3 to know when that mortgage may have been paid
4 off?
5 A. No, I don't.
6 Q. And did you ever make any payments to
7 Federal Land Bank after your father died when you
8 were leasing from the trust?
9 A. Not direct. I made them to the trust;
10 they made them to the Land Bank.
11 Q. If you'd look to the next paragraph
12 down on that same page to the will, it says,
13 "Fifth: Division of separate and community
14 property." It discusses there in line 3, your
15 dad says, "I am the owner of approximately
16 2500 acres of farming and ranch land." And then
17 further down it says -- provides a legal
18 description, and then it says, approximately 2521
19 acres, and that there may be other land.
20 Was it your understanding, Jerry, that
21 this land that's described here, the ranch was
22 about 2500 acres?
23 A. Yeah, 2540 is what I always thought.
24 Q. There's not other land elsewhere
25 that --

Page 50

1 A. No.
2 Q. Okay. Bottom of that page, it
3 discusses the Gummersall house and Ender's
4 property that were "bequeathed to my wife." Were
5 those properties ever subsequently leased by you?
6 A. No.
7 Q. So those went out right to Beth?
8 A. Yes.
9 Q. Ender's property and the Gummersall
10 house, were they both in the city of Soda
11 Springs?
12 A. Yes.
13 Q. Turn to the next page of the will.
14 Under paragraph 6, at the top on page 3, it talks
15 about the gift to the spouse, Beth; that she
16 receive all personal effects, clothing and the
17 automobile. Was there any personal property that
18 went to anyone but Beth?
19 A. Not to my knowledge.
20 Q. And was there any of your father's
21 personal property or effects that had been gifted
22 to you or anybody else during his life?
23 A. Yes. He gave my girlfriend a .270.
24 She drew an elk permit and a moose permit in the
25 same year, and he brought his gun out and give it

Page 51

1 to her. I had to buy it back when we split up.
2 Q. Probably a Winchester Model 70?
3 A. Three-sixty-four.
4 (Mr. Cahoon entered the room.)
5 Q. (BY MR. BUDGE) As I review the rest of
6 the will here, you're aware that everything else
7 that we haven't discussed was basically left in
8 trust for Beth during her life?
9 A. Yes.
10 Q. And you understood that she was to
11 receive the income off the trust property?
12 A. Yes.
13 Q. And then is it also your understanding
14 under the will that upon death, the trust would
15 terminate?
16 A. No, I didn't understand that. I think
17 -- I think here it says that the trustee can --
18 oh, yeah, the trust can terminate, yes.
19 Q. Okay. I think you gave me the answer
20 to this earlier, Jerry, that you had been -- you
21 had an oral agreement with your dad that you --
22 that was the crop share lease that went on prior
23 to his death?
24 A. Yes.
25 Q. When I look at paragraph 7, it

Page

13 (Pages 49 to 52)

1 basically states in there that you were to have
2 the first option to rent or lease?

3 A. Yes.

4 Q. So your understanding, once your dad
5 died, the prior oral lease you had ended, but you
6 were to have the first chance to enter into a new
7 lease agreement with the trust?

8 A. Yes.

9 Q. Okay. And that's, in fact, what
10 happened, wasn't it?

11 A. Yes.

12 Q. And then if you look at paragraph 8 --
13 and I apologize that the copies are hard to read,
14 'cause the ones we obtained, I think from you or
15 John Souza, apparently had been highlighted over
16 -- but this seems to indicate that the once the
17 trust terminates, the assets remaining, which
18 would essentially just be the ranch itself, would
19 be distributed equally between your father's
20 three sons, you, Dallas, and Doug?

21 A. "Without the necessity of selling or
22 subdividing it," yeah. That's what it says
23 there, I think; isn't it?

24 Q. Yeah. If you look at the beginning of
25 that paragraph 8, you'll see there the trust

Page 53

1 states that, "Upon the passing of my wife from
2 this life, it is my desire if at all possible
3 that the children retain this farming and
4 ranching land and hold it together and farm it as
5 joint tenants, under whatever arrangements are
6 mutually agreeable to them, without the necessity
7 of selling or subdividing it."

8 My question, Jerry, is: Would it be
9 accurate to say that there was never a time after
10 your father's death that you were operating
11 together with Dallas or Doug?

12 A. No.

13 Q. And if you look at the last paragraph
14 of that Section 8th, towards the bottom of that
15 page 4, it states that, "If my children are
16 unable to agree upon the operation and management
17 or division of the property following the death
18 of my wife, my trustee is instructed to sell the
19 same and then to divide the proceeds equally
20 between Dallas and Jerry and Doug after all
21 expenses, taxes, liens of any kind and nature
22 against the trust property is paid."

23 Would you agree, Jerry, that you were
24 -- are at the point now and had been for some
25 time that you and Doug and Dallas are not able to

Page 54

1 agree with respect to continued operation of the
2 ranch?

3 A. Yes.

4 Q. And how long has that disagreement
5 been? Ever since Beth died?

6 A. Well, as -- as far as I knew it, in
7 October of last year when we met in this same
8 office. I talked to Dal at Beth's funeral and
9 said we ought to get together and see if -- you
10 know, talk this over. And then the next thing I
11 know, we're this here, that you called me in or
12 whatever it was.

13 Q. You had some discussion with Dallas and
14 with Doug over a period of time that --

15 A. I talked with Dal the day that we
16 buried Beth and said we needed to get together
17 and, you know, figure out what we're going to do
18 here.

19 Q. And so you had some discussions for a
20 while, but all of them lead to weren't able to
21 reach an agreement?

22 A. That was the only discussion there was.
23 He never did respond back.

24 Q. Would it be correct to say, Jerry, that
25 there's no question that the three of you aren't

Page 55

1 in agreement, and you don't dispute that the --
2 pursuant to the terms of the -- your father's
3 will that set up the trust, that the property's
4 now to be sold and the proceeds divided?

5 A. I do dispute that.

6 Q. So you disagree that we're supposed to
7 sell the property and divide the proceeds?

8 A. Yes, I do.

9 Q. Okay. Explain to me how you dispute
10 that.

11 A. Well, if -- I think in the trust it
12 says it can be in kind or in money, doesn't it?

13 Q. I'm not questioning that if it's sold
14 that each of you have a right to buy it and meet
15 any offer. I simply was referring to the
16 language I just read at the bottom of 3 that says
17 if the three of the boys, if the three of the
18 boys, the three of you can't get along and you
19 can't agree as to the continued operation of the
20 farm, then that circumstance then requires the
21 sale of the ranch. And I think initially you
22 said yes, that's correct, and now you're hedging.

23 A. Well, I didn't think it was -- I was
24 hedging. But I guess if that's what it says
25 there, that's what it says.

Page 56

14 (Pages 53 to 56)

1 Q. It says, "If my child are unable to
2 agree upon the operation and management or
3 division" -- and I think you told me you had some
4 discussions after Beth's death, but you didn't
5 reach an agreement?

6 A. We didn't get to have a discussion.

7 Q. And you're aware, are you not, Jerry,
8 based on communications, some while you met in
9 this office and others back and forth with
10 letters --

11 A. Yeah, that's all in October, is when --
12 yeah.

13 Q. Okay. From then on, so from October of
14 2008, you were well aware that Dallas and Doug
15 wanted the ranch sold?

16 A. Right. I asked them both personally
17 that day.

18 Q. And we're now proceeding with that sale
19 by way of the listing agreement with Gate City
20 Realty; isn't that correct?

21 A. I don't know. Is it correct?

22 Q. Well, we're trying to find a buyer.

23 A. You're the trustee in the -- you're the
24 man now. You're pushing the cart; I'm not.

25 Q. No. Let's just say this, Jerry:

Page 57

1 There's no question that Doug and Dallas want the
2 ranch sold --

3 A. I am --

4 Q. -- and I'm certainly advocating that on
5 their behalf. But are you disagreeing with the
6 terms of your father's will that direct, if you
7 don't have an agreement, we're supposed to sell
8 the property?

9 A. I'm not disagreeing with that; I'm
10 disagreeing about phony appraisals and that.

11 Q. You might have a disagreement of how
12 the money gets split up?

13 A. And a phony appraisal, yeah.

14 Q. But you don't dispute that pursuant to
15 your dad's will and the trust provisions it
16 contains, we need to get the ranch sold now?

17 A. One -- one thing I do question. As a
18 trustee, doesn't it say that Mr. Souza can --

19 Q. Sell the property?

20 A. Or divide it in kind or in money?

21 Q. I believe it says that.

22 Would it be correct, Jerry, that when
23 told your brothers, Doug and Dallas Beus, filed
24 the complaint against you on May 6th of 2009, you
25 were refusing to go along with the listing and

Page 58

1 sale of the property?

2 A. I wasn't refusing. There was several
3 items that need clarified. There was a lease on
4 it. How can you sell a property when it's
5 acreages are wrong and there's a lease on it?
6 And there was several -- several things that
7 needed to be cleared up before it was put up for
8 sale.

9 Q. My point is, once the suit got filed,
10 you've now approved of listing the property for
11 sale with Gate City?

12 A. I haven't approved.

13 Q. You're aware it's been listed?

14 A. I think it's -- I'm aware it's been
15 listed. You're the trustee; you --

16 MR. SMITH: He's not the trustee.

17 THE WITNESS: Oh, well, he took over.

18 MR. BUDGE: I think John Souza is still
19 the trustee.

20 THE WITNESS: Oh.

21 Q. (BY MR. BUDGE) Are you aware of John
22 Souza not being the trustee?

23 A. No. I'm just aware that you try to
24 take his job.

25 Q. Isn't it correct, Jerry, that prior to

Page 59

1 the commencement of the complaint on May 6th,
2 2009, you told John Souza you would not agree to
3 have the property listed, and you told him you
4 did not want it listed for sale?

5 A. Not with -- with until the conditions
6 were -- the acreages were brought up and the
7 irrigated acres and specifically the lease.

8 Q. Okay. What issues did you direct Mr.
9 Souza to resolve?

10 A. I didn't direct him to do nothing. I
11 just told him my feelings.

12 Q. Okay. So you wanted the acreage
13 corrected because you felt that the appraisal had
14 the wrong irrigated acres?

15 A. It had the wrong total acres.

16 Q. Okay.

17 A. It had the wrong irrigated acres. And
18 it was a phony appraisal.

19 Q. Okay. Let's talk about the acres.
20 Based on your belief that the appraiser had the
21 wrong acreage, did you provide corrected
22 information?

23 A. Did I?

24 Q. Yes.

25 A. I thought I did.

Page 60

15 (Pages 57 to 60)

1 Q. And who did you provide the information
2 to?
3 A. The --
4 Q. The appraiser?
5 A. No. I provided it to my attorney,
6 Clyde Nelson. I think you've got correspondence
7 in there that -- between you and him in that
8 stack somewhere's this high. But he's told you
9 the right acreage. He had 1400-and-some tillable
10 acres. There's always been just 1250 from day
11 one. And he had 800-and-so-many irrigated acres.
12 And that has been -- never has there been over
13 750-some acres, never, never.
14 Q. So the total acres in the farm was
15 fine. But just how it was classified between
16 tillable and irrigated was what you had the
17 problem with?
18 A. What -- tillable and range. How do you
19 get 14 -- how do you get 2500 acres if you got
20 1400-and-some tillable and 1200-and-some?
21 That's --
22 Q. Well, let's just go about it this way,
23 Jerry. The information you had, you brought to
24 the attention of your then attorney, Clyde
25 Nelson --

Page 61

1 A. Right.
2 Q. -- and he wrote some letters to Mr.
3 Souza and also to myself, and the information
4 contained in those letters would be what you
5 believe to be the accurate number of acres?
6 A. Right.
7 Q. Okay. And just, if you can recall off
8 the top of your head, what is the correct total
9 acres, and how do you break that down between
10 irrigated and what you say is tillable and what
11 is range land?
12 A. The total amount of acres would be
13 around 2540, more or less. And the tillable
14 ground would be 1250, more or less.
15 Q. Okay. I think you said 750, more or
16 less, irrigated?
17 A. Right.
18 Q. And would the rest all be considered
19 dry grazing?
20 A. Dry grazing, yes. The appraiser said
21 that those -- your appraiser said there was 130
22 or 40 acres of waste land. I'd be interested in
23 having that, if it's not valued.
24 Q. Was your father's will and estate
25 probated in Caribou County, as far as you know?

Page 62

1 A. I don't know.
2 Q. Was that handled by Max Whittier?
3 A. I don't know.
4 Q. Do you know if anyone contested your
5 father's will or the trust?
6 A. I don't know.
7 Q. As far as you know, were the assets of
8 your father's estate distributed in the manner
9 directed in the will itself?
10 A. Yeah, as far as I know.
11 Q. Let's look at Exhibit 2.
12 MR. BUDGE: Let's go off the record.
13 (Mr. Cahoon left the room.)
14 (A recess was held.)
15 (Exhibit 23 marked.)
16 MR. BUDGE: Let's go back on the
17 record.
18 Q. (BY MR. BUDGE) Turn to Exhibit 2, if
19 you would. You'll see that's a trust agreement
20 that was dated May 14th, 1987, with also Exhibit
21 B to the complaint. And you'll note in the first
22 paragraph of that, Jerry, that's entered into
23 between R. M. Whittier as personal representative
24 of the estate of Lynn G. Beus, and R. M. Whittier
25 as trustee and also grantor. And it doesn't

Page 63

1 refer to who the grantor is. But do you have any
2 knowledge regarding why Mr. Whittier prepared
3 that trust agreement?
4 (Mr. Cahoon entered the room.)
5 THE WITNESS: I don't. I thought it
6 was prepared when my dad was still alive.
7 Q. (BY MR. BUDGE) But this was done some
8 16 months after his death. And I just wondered
9 if you knew anything about it, how it came into
10 existence or why.
11 A. Is this the one Beth signed, or is this
12 the one dad signed?
13 Q. No, this was after your father's death.
14 So after he died --
15 A. He put his in trust before he died, I
16 think. Yeah, this was the one that --
17 Q. Well, I might have got you confused.
18 There are trust provisions in this will.
19 A. Yeah.
20 Q. But then if you look at Exhibit 2, this
21 document entitled "Trust Agreement" was dated May
22 14th, '87. And according to the notary, that was
23 the date it was signed by both Mr. Whittier --
24 A. Okay.
25 Q. So it came into existence some --

Page 64

16 (Pages 61 to 64)

1 A. I didn't know -- I didn't know what was
2 in the trust at all.
3 Q. When did -- did this document first
4 come to your attention? When did you first see
5 this one?
6 A. I suspect it was maybe shortly after --
7 mom signed this. Well, I suspect it was a day or
8 two after we buried my dad, and me and my
9 stepmother and Max Whittier met down --
10 Q. Okay. Let's -- excuse me for
11 interrupting. I've got you confused. Your dad
12 died January 5th of '86.
13 A. Mm-hmm.
14 Q. If you look at this Exhibit 2, it was
15 dated and the notary indicates it was signed on
16 May 14th, 1987.
17 A. Mm-hmm.
18 Q. So your dad dies in January of '86.
19 Sixteen months later, this trust agreement gets
20 signed. So you could not have seen it before it
21 came into existence.
22 A. No. I -- I didn't see it before, I
23 guess.
24 Q. Okay. So my question was: Sometime
25 after May 14th of '87 you must have become aware

Page 65

1 of the existence of this trust agreement?
2 A. Yes.
3 Q. And when would that -- when do you
4 first remember seeing the agreement?
5 A. Sometime after May 14 -- or the 14th of
6 May 1987.
7 Q. You just don't know when for sure?
8 A. No.
9 Q. Okay. And do you have any knowledge
10 why Max Whittier apparently prepared the
11 agreement?
12 A. I suspect he prepared it because --
13 Q. Now, let me interrupt you. I don't
14 want you to guess or speculate. If you have
15 knowledge that's based on what somebody told you
16 or something you read, let's talk about it. But
17 don't guess why it might have come into
18 existence. If you know, tell me. If you
19 don't --
20 A. I don't know.
21 Q. And would you know why Beth signed onto
22 this trust agreement, Exhibit 2?
23 A. Because my father wanted it put that
24 way. That's what the will said. That's all I
25 know.

Page 66

1 Q. When you say "because my father wanted
2 it," are you guessing that that's why she signed
3 on?
4 A. No. I think it was in my father's
5 will, wasn't it?
6 Q. Okay. You're basically saying since
7 your father's will set up a trust for Beth, you
8 were assuming this was simply to implement the
9 trust that was in the will?
10 A. I don't know. I know my father set up
11 a trust -- or was -- that was his intent in his
12 will.
13 Q. Let me help you with this. Turn to
14 page 2 of this trust agreement, under paragraph
15 6.
16 A. Let's see page 2.
17 Q. And read along with me the last
18 sentence of paragraph six says "However, the
19 trustee shall attempt to follow the desires of
20 Lynn G. Beus as was set forth in his Last Will
21 and Testament dated June 27, 1983."
22 So is it basically your understanding
23 that -- that this trust agreement came into
24 existence later to help implement what your dad
25 intended in his will, being, setting up a trust

Page 67

1 for the benefit of Beth?
2 A. I really don't know.
3 Q. Okay. This agreement also provides
4 over in paragraph 19 that the trustee was to
5 render an annual accounting of the trust to the
6 primary beneficiary, which would be Beth. Do you
7 know, based on your conversations with the
8 trustees over the years, the Whittiers or
9 Mr. Souza or communications with Mr. Souza, who
10 is the current trustee, whether or not Beth was
11 receiving an annual accounting of the trust
12 dealings?
13 A. My understanding was that they -- they
14 conversed, talked, and there was no written
15 signatures or anything, but they exchanged
16 information they needed.
17 Q. So sometimes they communicated with
18 Beth --
19 A. Yes, definitely.
20 Q. -- by phone?
21 A. Definitely.
22 Q. And are you aware of any annual reports
23 in writing that were submitted to Beth
24 indicating --
25 A. I'm not aware of, no.

Page 68

1 MR. SMITH: Wait until he finishes his
2 question.
3 THE WITNESS: Excuse me.
4 Q. (BY MR. BUDGE) Jerry, during the
5 course of your dealings with the trust when you
6 leased the property or otherwise, did you ever
7 borrow money from the trust?
8 A. No.
9 Q. Did you ever loan money to the trust?
10 A. In a way.
11 Q. Was that documented in any way?
12 A. Just -- it would be through my checks.
13 My lease payment was less than what it took to
14 pay all the taxes and that for a few years, and I
15 just paid the taxes over and above my lease
16 payment.
17 Q. Okay. So when you made some lease
18 payment -- or you made some tax payments that you
19 considered that was somewhat of a loan to the
20 trust?
21 A. Yes.
22 Q. And did you really consider that to be
23 some kind of a credit that you were entitled to
24 against your lease obligation?
25 A. Yes.

Page 69

1 Q. So there aren't any other loans that
2 you made otherwise --
3 A. No.
4 Q. -- where you said "Here's a loan, and I
5 want a note" --
6 A. No.
7 Q. -- "and interest back"?
8 A. No.
9 Q. Let's turn to the lease agreements,
10 Jerry, if you look to Exhibit 3. Do you
11 recognize that as a farm lease agreement that you
12 entered into with the trust under date of March
13 26th, 1986?
14 A. Yes, it looks like.
15 Q. Would that be the first written lease
16 agreement you entered into with the trust?
17 A. Yes.
18 Q. And did that lease cover all of the
19 property that we've referred to as the trust
20 property, the Beus ranch?
21 A. Yes, if that legal description is -- it
22 looks like it, yes.
23 Q. The legal description says
24 approximately 2500 acres, and at the end it says
25 2521. So that would be all of the ranch that

Page 70

1 you --
2 A. Yes.
3 Q. Down at the -- underneath the legal
4 description, it reflects the term of the lease to
5 be a period March 1, '86, through the December 31
6 and '87 had been scratched out and '93 was
7 penciled in?
8 A. Right.
9 Q. Do you recognize that?
10 A. Yup.
11 Q. And is that Mr. Whittier's initial and
12 your initial as well?
13 A. Yes.
14 Q. And how did that lease term come about,
15 and why it was changed, if you recall?
16 A. Well, you can't -- can't operate a farm
17 or ranch on one year if you're going to make any
18 improvements or anything like that.
19 Q. So you requested a longer-term lease?
20 A. Yes.
21 Q. And Mr. Whittier agreed. And so both
22 of you penned in the term?
23 A. Right.
24 Q. Turn to the second page of that, if you
25 would. The rent was stated to be a cash amount

Page 71

1 of 23,900; is that correct?
2 A. Yes.
3 Q. And how was that number arrived at
4 between you and Mr. Whittier as an amount of rent
5 that would be agreeable?
6 A. A day or two after we buried my father,
7 Mr. Whittier called me and said, "We need to meet
8 with your stepmother. She wants to get this
9 settled and see what's going on."
10 And so he set up a meeting down at the
11 Ender's Cafe & Hotel where -- which she owned --
12 which she owned after dad passed away -- but he
13 set up a meeting. And he come down and asked
14 Beth, you know, what she wanted, what she thought
15 was going. And I explained to her, and she well
16 knew, that -- she wanted a steady income. She
17 didn't want to try to have to deal with expenses.
18 She didn't want to have a bad year and not get
19 any income.
20 Q. And that's why you came up with the
21 cash lease as opposed --
22 A. That's --
23 Q. -- to the crop share that you'd done
24 previously?
25 A. Exactly.

Page 72

18 (Pages 69 to 72)

1 Q. So how did you determine the amount of
2 23,900 to be the annual rent?
3 A. We just determined -- Max asked me, he
4 says do you -- asked Beth, and she said, "Well, a
5 thousand a month."
6 And Max asked me, he said, "Do you
7 think you could pay her 12,000 a year or a
8 thousand a month?"
9 And I said, "Most years, yes, you
10 know."
11 And he says, Well, you know, that
12 there's other stuff there other than that.
13 There's the land payment -- which I suspect was
14 7,000 a year, in that neighborhood -- and there
15 was taxes and there was trustee fees and there
16 was accountant fees for the -- do the taxes for
17 trust. And we estimated about what they were,
18 and he asked me, "Do you think you can make
19 that?"
20 And I said, "I'll try. Yes, some years
21 I can; some years, it's going to be tough."
22 And that's --
23 Q. So basically by mutual agreement
24 between yourself, Max Whittier, as trustee; and
25 Beth, as the income beneficiary, you arrived

Page 73

1 lessee are to maintain the irrigation pumps,
2 sprinkler heads, sprinkler equipment, you're to
3 furnish all the fertilizer, to remove rocks,
4 maintain liability and property insurance,
5 maintain irrigation ditches.

A. Where -- maintain what?

Q. Irrigation ditches. I'm going on
page --

A. What page is that on?

Q. On page 3 now. It basically states
that you'll maintain the fences, you'll be
responsibility for damages, you keep the place
free of weeds. Without going into a greater
detail, it basically said you would pay the cash
lease, you'd pay all the expenses; except for the
taxes were supposed to be paid by the trust.

Now, is that what actually happened?
Did you follow the lease agreement and the trust
paid the taxes and you were paying all the other
expenses?

A. Let's see, did it say -- what paragraph
-- the lessor? Who'd be the lessor?

Q. The lessor is the trust.

A. Okay.

Q. And you're the lessee.

Page 75

1 at --
2 A. Yes.
3 Q. -- twenty-three-nine as being a fair
4 amount?
5 A. Yes.
6 Q. And so during the course of this
7 particular lease, did you pay these rental
8 amounts directly to Beth or through the trustee,
9 Mr. Whittier?
10 A. To -- through the trustee directly.
11 Q. Was that for the entire term of this
12 particular lease that would have ended in 1993?
13 A. Yes.
14 Q. And did you pay the full amount every
15 year?
16 A. Yes.
17 Q. Jerry, as I look at the terms of the
18 lease -- and we can walk through it specifically
19 if you want -- but other than the real property
20 taxes -- which on page 3, it says, the trust is
21 to pay; lessor is to pay all taxes on the real
22 property -- if you go through everything else, it
23 appears that you were paying all the other
24 expenses. And you can follow along with me if
25 you want on page 2. It basically says you as the

Page 74

1 A. "Lessor shall maintain all irrigation
2 ditches and do all irrigation."

Doesn't that say that here?

Q. Yeah. Let's back up, then, and go
through it one by one.

A. Okay.

Q. Now, let's look at that one you just
focused on. This is on the top of page 3. It
says, [as read] "The lessor shall maintain
irrigation ditches."

Do you consider that to be accurate, or
is that a typing error? Were they -- was Beth
maintaining the ditches, or were you doing that?

A. Did what?

Q. Who was maintaining the ditches?

A. I was, yeah.

Q. So do you think that's a typing error
on the top of page 3?

A. Not necessarily, no.

Q. It seemed kind of unusual that the
trust would maintain the irrigation ditches but
everything else is yours -- when you look at all
the other expenses to be paid -- other than the
taxes, which was --

A. It may seem unusual; I don't know.

Page 76

19 (Pages 73 to 76)

1 Q. Well, did the trust ever doing any --
2 A. That's fine.
3 Q. -- ditch maintenance?
4 A. No. I done it for the trust all along,
5 yeah.
6 Q. Okay. So as to everything else that's
7 here, let's go back to page 2, you maintained the
8 irrigation pumps and main lines, sprinkler head,
9 and irrigation equipment as necessary for the
10 irrigation.
11 A. There wasn't much to maintain at that
12 time.
13 Q. That wasn't my question. My question
14 was: Did you do the maintenance? Your lease
15 says you're to do the maintenance.
16 A. Yeah, there wasn't much maintenance to
17 be done because there wasn't much of that.
18 Q. Understand. But you don't dispute that
19 the maintenance of the sprinkler equipment was
20 your obligation, not the trust?
21 A. Yes.
22 Q. Okay. And let's go to the next item.
23 It says, "lessee is to furnish all furniture" --
24 "fertilizer," excuse me -- "spray chemicals."
25 That was your obligation; correct?

Page 77

1 A. Which page are we on?
2 MR. SMITH: Page 2.
3 Q. (BY MR. BUDGE) Just go down from page
4 2. I'm going to make this kind of simple, Jerry.
5 What was leased to you -- the trust paid the
6 taxes -- and other than this question on the
7 irrigation ditch --
8 A. Yeah.
9 Q. -- everything else you paid for; you
10 did rock removal, you paid for maintenance, you
11 paid operating expenses, you paid for spraying
12 the weeds, you paid for insurance; right?
13 A. Yes. Yes.
14 Q. If you turn over to page 6, if you
15 would, if you look at the third full paragraph in
16 the top of page 6, it says, "That this lease
17 shall not be construed to deem to create or give
18 rise to any partnership or any employee/employer
19 relationship between the parties."
20 A. Yeah.
21 Q. So you didn't ever consider yourself to
22 be a partner with the trust in running the ranch;
23 correct?
24 A. No.
25 Q. You leased it from --

Page 78

1 A. Yes.
2 Q. -- the trust?
3 And you didn't ever consider to be
4 hired as an employee of the trust?
5 A. No.
6 Q. At the bottom of page 6 you'll see the
7 sentence, it states, "It's understood and agreed
8 between the parties that the lessor shall have
9 the right to terminate said lease or to
10 renegotiate the terms at the end of the year."
11 Was that -- what did you understand
12 that to mean? At the end of any year they could
13 terminate the lease?
14 A. No, I didn't. I understood it to mean
15 the first year.
16 Q. At the end of the first year they could
17 terminate you?
18 A. Yeah.
19 Q. Okay. And then let's turn to the next
20 page, the last page, 7, and follow along on the
21 second full paragraph there. It states, "It's
22 understood and agreed between the parties that
23 this lease is subject to the terms of the Last
24 Will and Testament left by Lynn Beus and subject
25 to the terms of the trust established by Lynn

Page 79

1 Beus for and on behalf of his wife, Beth Beus."
2 Is there any question in your mind what
3 that means?
4 A. No. Nope.
5 Q. You understood that the lease was
6 simply subject to the terms of the trust that
7 your dad set forth in his will?
8 A. Yeah, except -- well, no, I don't quite
9 understand that. I believe -- I believe it
10 states in his will and in his -- in the trust
11 that the trustee can lease four terms beyond the
12 trust.
13 Q. My question was simply this: This says
14 that the will -- the lease was entered into
15 subject to the terms of your dad's will?
16 A. Yes.
17 Q. And you agree with that?
18 A. Yes.
19 Q. And that same language appeared in all
20 of the later leases --
21 A. I don't know if it did.
22 Q. -- which I'll point it out to you.
23 A. Okay.
24 Q. I just wanted to know if you had any
25 reason to question that particular provision of

Page 80

20 (Pages 77 to 80)

1 the lease agreement?

2 A. No.

3 Q. Okay. Let's turn to the next Exhibit,
4 4. Exhibit 4, it appears to be an addendum to
5 the farm lease that was entered into April 6th,
6 1994, and Monte Whittier is listed as the trustee
7 of the trust, and he signed it. And it appears
8 that that addendum simply did two things, it
9 extended the term for another seven years,
10 through March 1st of 2001. Do you see that in
11 the second to last paragraph?

12 A. Yeah.

13 Q. And then it raised the rent in the last
14 paragraph from twenty-three-nine to
15 twenty-five-five.

16 A. Mm-hmm.

17 Q. Correct?

18 A. Yes.

19 Q. Can you tell me, what were the
20 circumstances that gave rise to the seven-year
21 extension?

22 A. The -- the rise in dollar amount?

23 Q. No. The extension for another seven
24 years apparently is what you wanted. Was there
25 conversation again this time with Max Whittier

Page 81

1 about, hey, we need to extend the lease, and you
2 want to go another seven years, or how did it
3 come about that you extended the lease another
4 seven years?

5 A. I think Max was dead then.

6 Q. With Monte, then. You're working with
7 Monte?

8 A. Yeah. That is a normal lease up in
9 that country. And in order to make improvements
10 and everything, you've got to -- you know, you
11 can't run a ranch or farm on one year; it take as
12 lifetime.

13 Q. So both parties decided let's just
14 extend another seven years?

15 A. Yes.

16 Q. And how was it determined that the rent
17 should be increased under his lease for the next
18 seven years from twenty-three-nine to
19 twenty-five-five per year?

20 A. That -- the lease payment wasn't
21 covering all expenses, attorneys fees, and taxes
22 had went up and accountant fees went up and --

23 Q. And how did -- how did that come to
24 your attention? Who told you that?

25 A. Because I was having to pay the taxes

Page 82

1 over and -- my lease.

2 Q. Well, was Beth saying we need to have
3 more payments so I can get the net income that I
4 want to live on?

5 A. No.

6 Q. Or was it Monte --

7 A. I made sure --

8 Q. -- that was saying it?

9 A. No. I made sure that Beth -- that's
10 why I paid the taxes; I made sure that Beth got
11 her money no matter what.

12 Q. Okay. Let me rephrase that.

13 You basically raised the rent to
14 twenty-five-five. Were there conversations
15 between you and Monte Whittier, or you and Beth
16 where you discussed the rent and decided that was
17 a fair amount?

18 A. Yes.

19 Q. Okay. And all of you mutually agreed
20 it was -- twenty-five-five was a fair rent?

21 A. Yes.

22 Q. Let's go to the next Exhibit 5. Okay.
23 Do you recognize that as the next farm lease that
24 was entered into January 1st, 2007?

25 A. Yes.

Page 83

1 Q. And at that point in time it appears
2 Mr. Souza was acting as trustee?

3 A. Yes.

4 Q. Was this the first time that you dealt
5 with Mr. Souza as the trustee?

6 A. No, I don't think so.

7 Q. When had you been dealing with Mr.
8 Souza prior to that?

9 A. Just trust business. He come down and
10 met with Beth in -- let's see -- about in 2000 or
11 something like that. I didn't have the money to
12 quite pay Beth off. It was a drought year and
13 that. I went to her and asked her. And she says
14 I owed her 12,000. And I asked her, I said, "I
15 got 4,000 now, and I'll scratch and see if I can
16 come up with the rest of it here shortly. Would
17 that be okay?"

18 And she said, "Yes."

19 And so I called John and told him that.
20 Beth and John and myself sort of agreed -- Beth,
21 her exact words were: I just soon get it every
22 month or so as get it all at once, because my
23 grandkids find out and they come and borrow money
24 from me. This way, I can tell them I haven't got
25 that much beer money.

Page 84

1 Q. Okay. Before I go into the -- this
2 2007 lease that -- the one that has taken us
3 forward that we're operating under now -- let me
4 back up and ask one question that I forgot.

5 Under the lease we were discussing
6 before, the addendum that extended you from --
7 the addendum dated April 6, 1984, during that
8 period up until the time of this new 2007 farm
9 lease, which is Exhibit 5, were you making the
10 payments directly to the trustee?

11 A. Yes.

12 Q. None were paid directly to Beth?

13 A. Well, no. Right at the -- I think some
14 were paid directly to Beth at the end of -- you
15 know.

16 Q. And what -- what caused that to happen?

17 A. It was just -- the lease payment wasn't
18 covering the costs again. And Beth and I and
19 John got together and said, well, we can cut out
20 the accountant fees, and we can cut out some of
21 the attorneys fees if we just deal amongst
22 ourselves.

23 Q. So basically just a means to save some
24 expense?

25 A. Yes.

Page 85

1 Q. Because if no money went through the
2 trust, then they wouldn't have to file a trust
3 tax return and --

4 A. Therefore, no accountants and . . .

5 Q. Okay. Now, let's go back to where we
6 started on discussing this Exhibit 5, the
7 January 1st, 2007, lease, and follow along with
8 me on that. If you see the third full paragraph
9 that says the term of the lease, and it says "For
10 the period from January 1, 2007, through
11 December 31" -- "2013" originally, and then it
12 was penned over and initialed again?

13 A. Mm-hmm.

14 Q. So apparently you agreed to extend it
15 for another full seven years --

16 A. Yes.

17 Q. -- rather than six?

18 A. Yes, I think that was . . .

19 Q. And everybody agreed to that?

20 A. Yes.

21 Q. Then it goes on to say, that "Unless
22 the lease is sooner terminated." So was it your
23 understanding that there was circumstances under
24 which the lease might be terminated before 2014?

25 A. No, I didn't. In any way.

Page 86

1 Q. Well, I guess --

2 A. Don't --

3 Q. If you breach the lease and didn't pay
4 your rent, it could get terminated?

5 A. Yeah, if I -- or misused the property
6 or something like that.

7 MR. BUDGE: Let's go a few more
8 minutes, then we'll take a lunch break.

9 Q. (BY MR. BUDGE) Jerry, at the bottom of
10 that 2007 lease, Exhibit 5, it provides that the
11 rent now would be reduced to \$12,000 to be paid
12 to Beth. So that's the first time the lease
13 agreement indicates those monies to be paid
14 directly to Beth; correct?

15 A. Yeah. Beth and I got together -- and
16 that wasn't the lease; I had to pay the land
17 payments and --

18 Q. What's the --

19 A. -- and I had to pay the taxes and
20 trustee.

21 Q. Let's -- I'll ask you about some of
22 those other things in a minute. But let's just
23 focus on responding to maybe one question at a
24 time.

25 So my question was: This is the first

Page 87

1 time a lease agreement said that instead of
2 making the payments through the trust they would
3 go directly to Beth; would you agree?

4 A. As far as I know, yes.

5 Q. Okay. And then the rent got reduced
6 from twenty-five-five per year by more than half
7 to 12,000 per year. So how was the 12,000 rent
8 determined? How did you arrive at that?

9 A. Just like we arrived at the 23,500 to
10 start with.

11 Q. So you and John Souza and Beth got
12 together and decided --

13 A. She wanted 12,000 a year.

14 Q. She wanted 12,000 net to her?

15 A. She wanted \$1,000 a month or 12,000 a
16 year.

17 Q. And so if you look at Item 2 at the
18 bottom of 1, it says in addition to paying the
19 \$12,000 rent to Beth, you were to pay the taxes
20 on the property?

21 A. Yes.

22 Q. So that was different than the previous
23 leases where the trust would pay the taxes. Now
24 that cost was being shifted to you; correct?

25 A. It was basically understood that it was

Page 88

22 (Pages 85 to 88)

1 part of the lease.
2 Q. And approximately what are the annual
3 real property taxes that you assumed under this
4 2007 lease?
5 A. Approximately \$5,000.
6 Q. You brought with you a copy of your
7 2008 property tax bill; correct?
8 A. No.
9 MR. SMITH: Yes, you did.
10 THE WITNESS: Oh, yeah.
11 Q. (BY MR. BUDGE) Would these tax notices
12 cover all of the property?
13 A. I'm not sure. I haven't read all the
14 legal descriptions. Maybe you can tell me if it
15 covers it.
16 Q. (BY MR. BUDGE) Well, have you got some
17 tax bills that you didn't bring along for 2008?
18 MR. SMITH: It's going to be pretty
19 close.
20 THE WITNESS: Is it?
21 MR. SMITH: Yeah.
22 Q. (BY MR. BUDGE) Jerry, would you
23 represent, subject to check, that this represents
24 all of the tax notices on the property you lease,
25 as far as you know?

Page 89

1 A. Yes.
2 Q. And I'll say subject to check.
3 A. Yes.
4 Q. If you find another bill, you'll --
5 A. Yes.
6 Q. -- bring that to our attention?
7 And when I look at these tax notices,
8 they appear to be addressed to the trust, in care
9 of John Souza at his Pocatello address?
10 A. I think -- yes, that's the way they're
11 addressed, yes.
12 Q. And how did these come to your
13 attention? Did Mr. Souza simply mail them up to
14 you for payment?
15 A. Yes.
16 Q. Let's go ahead and mark these as
17 Exhibit 24.
18 At the time you entered into the 2007
19 lease, Exhibit 5, do you know what Beth's health
20 was at the time?
21 A. She was in pretty good health. I mean,
22 she was a strong person, Beth was.
23 Q. How old was she at that time? Do you
24 know?
25 A. I really don't know.

Page 90

1 Q. And so when you said it was -- the rent
2 was set the same as before, did you and Beth and
3 John Souza sit down and agree that the 12,000 --
4 reducing the rent to 12,000 would be okay if you
5 took over payment of the taxes and --
6 A. Actually, the rent wasn't reduced; it
7 went up.
8 Q. Okay. Explain that, if you would,
9 Jerry.
10 A. The rent to her was the same, 12,000.
11 Q. Okay.
12 A. But then the taxes had went up and the
13 costs and everything.
14 Q. The only expenses that Beth would have
15 been paying under the prior leases was the taxes;
16 correct?
17 A. Beth wasn't paying the taxes; the trust
18 was.
19 Q. Excuse me, the trust, yeah. The trust
20 was paying the taxes.
21 So under the prior lease, if the rent
22 was twenty-five-five, and the trust paid the
23 taxes of which you said averaged 5,000, that
24 would leave a net to Beth of around 20,000 per
25 year; correct? And now she gets 12,000 a year.

Page 91

1 So I'm having a hard time understanding your
2 testimony that she got more under the 2007 lease.
3 A. Well, the same, except -- well, there's
4 land payments and taxes and trustee fees and
5 whatever.
6 Q. What land payments were being made by
7 Beth or by the trust from 2007 on?
8 A. To DBL Company.
9 Q. Can you point out where in this lease
10 agreement, Exhibit 5, it says that the trust or
11 Beth is supposed to make payments to DBL?
12 A. It don't say. I don't -- if you say.
13 Q. So what's the basis of your statement
14 that you just made that you said Beth or you
15 you're saying the trust was supposed to make some
16 payments to DBL?
17 A. Yeah. John had signed -- are you
18 getting that -- the mortgages? Is that what
19 you're trying to --
20 Q. No, I'll have some questions on those
21 in a moment. But at this point in time I'm
22 talking about the lease. And as I read the
23 lease, Beth gets directly 12,000?
24 A. Yeah.
25 Q. And the trust is supposed to pay the

Page 92

1 real property taxes -- excuse me -- you're
2 supposed to pay the real property taxes --

3 A. Yeah.

4 Q. -- correct?

5 Now, I'd like you to turn over to --

6 A. Let me read that.

7 Q. Well, I have a little problem with the
8 taxes, 'cause the first page seems to say that
9 you pay the taxes; and then page 3 seems to say
10 that the lessor, which would the trust, shall pay
11 all taxes.

12 So what I think happened, Jerry -- and
13 you can correct me if I'm wrong -- is Mr. Souza
14 probably just re-printed the same lease he had
15 before, because most of terms are the same, and
16 he forgot to correct the fact that the taxes were
17 now going to be paid by you.

18 A. Yeah, I -- I suspect -- say that again.

19 Q. Well, page 1 says that you're going to
20 pay the taxes now.

21 A. Yeah.

22 Q. If you look at the third paragraph on
23 page 3, it says the lessor shall pay all taxes.
24 So we've have a conflict over whether you pay the
25 taxes or the trust pays the taxes.

Page 93

1 A. Well, I paid -- I paid the taxes.

2 Q. So you don't dispute that there may be
3 a conflict in the lease over whether you pay or
4 the trust paid. But your understanding was that
5 you were supposed to pay the taxes?

6 A. I paid it as part of my lease to the
7 trust, to whatever. It was -- it was a verbal
8 between Beth and I and -- and John that --

9 Q. So --

10 A. -- to keep up on the bills and the
11 taxes and the payments and Beth's --

12 Q. Okay. So when the lease was signed
13 January 1 of 2007, you're going to pay the taxes,
14 you're going to pay directly to Beth 12,000, and
15 there's no obligation for you to pay anything to
16 the trust; correct?

17 A. Not to the trust. But I had to --

18 Q. Your answer would be no?

19 A. No. You're telling me what my answer
20 is. No.

21 Q. I knew you were going to go on to other
22 things. But I want to make sure that --

23 A. No.

24 Q. -- what you had to pay was 12,000 to
25 Beth, and you had to pay the taxes. And I don't

Page 94

1 see any obligation for you to make any other
2 payments to the trust. So were you making
3 payments to the trust under this 2007 lease or
4 something I don't see?

5 A. I don't know. No.

6 Q. If you look at the top of page 2 of the
7 lease, if you would, Jerry, this is a continue on
8 from things on page 1 that says that you're
9 supposed to pay; you pay the rent of 12 to Beth,
10 you pay the taxes. And Item 3 says you're to pay
11 "Any and all payments that may be done in the
12 real property annually."

13 A. That's what it says, yes.

14 Q. Do you have any -- can you explain what
15 that means? I have no idea what that means.

16 A. Well, just what it says. I don't know.

17 Q. What does that mean to you?

18 A. That means if there was any other
19 payments, I should pay them as part of the lease,
20 I guess. I'm not sure.

21 Q. Are there any other payments that you
22 were paying, that you know of?

23 A. From when to when?

24 Q. Well, I'm just asking you. What
25 payments were you making under that statement in

Page 95

1 Item 3?

2 A. What payments am I making?

3 Q. This says you were to pay "Any and all
4 payments that may be done in the real property
5 annually."

6 So what were you doing in addition to
7 paying the taxes and the rent to Beth?

8 A. I'm paying 5,000 a month to DBL.

9 Q. That's your loan payment?

10 A. Yeah. It's not exactly 5,000. I think
11 it's 4,979.

12 Q. So continuing with our review of that
13 lease, at the top of page 2, the first full
14 paragraph seems to be the first time the lease
15 says, that I've seen in the lease, this language
16 that provides that you'll be compensated for
17 improvements that you make. If you follow that
18 language, it says, "It's understood and agreed
19 that the lessee shall be compensated for any and
20 all improvements he makes to the lease premises.
21 Said" --

22 A. Which page is that? Five?

23 Q. Top of page 2.

24 MR. SMITH: Page 2.

25 THE WITNESS: Two. Okay.

Page 96

24 (Pages 93 to 96)

1 Q. (BY MR. BUDGE) Follow along?
2 A. Yeah, I've got it.
3 Q. "Lessee shall be compensated for any
4 and all improvements he makes to the lease
5 premises. Said compensation shall be paid to the
6 lessee herein at the time said improvements are
7 made and completed, as set forth in the terms of
8 the trust."
9 And my question is, Jerry: I didn't
10 see any language like that in the prior lease
11 agreements that indicated that you would be
12 reimbursed for improvements you made. So is this
13 the first time that you know it showed up in a
14 lease that says if you do improvements to the
15 property, Jerry, the trust will reimburse you?
16 A. If that -- yes, if that's the first
17 time, I guess it's the first time.
18 Q. Okay. It also says that you'll be
19 reimbursed when the improvements are made and
20 completed. So can you tell me what improvements
21 that you made after the date of this lease,
22 January 1, 2007, each year from 2007 --
23 A. Which would be last year?
24 Q. Would be 2007 or 2008 or so far in
25 2009.

Page 97

1 A. I can't recall everything.
2 Q. Just testify to what you can recall
3 that you made.
4 A. Improvements and, you know, repair of
5 -- I'd have to -- I'd have to --
6 Q. Can't recall anything --
7 A. -- check.
8 Q. -- since January 1 of 2007 in the way
9 of improvements -- not ordinary repairs and
10 maintenance -- but what you would consider to be
11 an improvement to the property? Did you build
12 any buildings? Did you construct a granary? Did
13 you install a new underground main line?
14 A. Yeah, I -- I installed a new main line
15 last year.
16 Q. Okay. Tell me about that. In 2008,
17 you put in a main line?
18 A. Yeah.
19 Q. And how long was the main line?
20 A. Oh, right at a quarter mile, give or
21 take, more or less.
22 Q. Was that a buried main?
23 A. Yes.
24 Q. And what was the diameter?
25 A. Five-inch -- or 4-inch, I think.

Page 98

1 Q. And what was the purpose of that?
2 A. To irrigate some acreage that wasn't
3 getting irrigated.
4 Q. Basically to expand the irrigated
5 acreage?
6 A. Yes.
7 Q. And how many additional acres did you
8 bring under irrigation with that expansion?
9 A. I'm not exactly sure. I would estimate
10 30 acres.
11 Q. And what was the cost of the main line?
12 A. I'm not -- I haven't got that.
13 Q. Do you know approximately what you
14 paid?
15 A. I -- in pipe costs and stuff like that,
16 I could come up pretty close, but . . .
17 Q. Do you have a -- who did you buy the
18 pipe from?
19 A. Well, I think I bought it in two
20 different places. I bought pipe at Valley . . .
21 Q. Valley?
22 A. I'm just not sure.
23 Q. So you're not sure who you bought it
24 from or what you paid for it?
25 A. No, I'd have to look and see.

Page 99

1 Q. Do you have records that would reflect
2 that?
3 A. I should have it for 2008.
4 Q. Will you produce any records that you
5 have on that?
6 A. Pardon?
7 Q. Will you produce --
8 A. Yes.
9 Q. -- whatever records you can to show the
10 pipe cost?
11 A. Yes.
12 Q. And did you do the installation
13 yourself?
14 A. Yes.
15 Q. If you incurred an expense, would that
16 have been an amount that you would give to Mr.
17 Hemmert, your tax-preparer, that would be
18 reflected on that 2008 tax return?
19 A. Yes, it should be.
20 Q. Other than what we've discussed, you
21 picking up the taxes and you getting reimbursed
22 for improvements, the rest of the lease
23 provisions seem to be pretty much the same as the
24 other leases. They say that you're to take care
25 of basically all the other expenses, the fences,

Page 100

25 (Pages 97 to 100)

1 the weeds, so on and so forth. Is that your
2 understanding that the rest of the lease terms
3 are the same as the --

4 A. Where's the fencing part of it? The
5 fencing part on the original lease -- I don't
6 know exactly how it got on this one -- but it was
7 to take care of the perimeter fences that was
8 existing between property owners. Since then, I
9 have interior fences -- fenced different pastures
10 -- have built in.

11 Q. My question was: Other than what we
12 discussed on the taxes and the reimbursement of
13 improvements, it appeared that the language of
14 the 2007 lease was basically identical to the
15 prior two leases. Would you agree with that
16 or --

17 A. It appears that way, yes.

18 Q. Is there anything different?

19 A. It appears that way, yes.

20 Q. Okay. For example, on page 6, you have
21 the exact same sentences I asked you about
22 before. There's a paragraph that says, "Lessor
23 shall have the right to terminate the lease or
24 renegotiate the terms at the end of the year."

25 And so you testified earlier you

Page 101

1 understood "the end of the year" to be the first
2 year of the lease, not every year that they could
3 terminate and renegotiate?

4 A. My understanding on that was if I
5 defaulted in or wasn't doing a good job farming.

6 Q. And two paragraphs below that on page 6
7 is the same one we discussed before that
8 basically said this lease was also entered into
9 subject to the terms of your dad's will and
10 trust? That's --

11 A. I think --

12 Q. -- identical language --

13 A. That's what it says, yes. If that's
14 what it says, that's what it says.

15 Q. Let me ask just a few more questions on
16 the leases, and then we'll leave that topic and
17 take a lunch break.

18 Regarding that language we've just been
19 talking about, if the lease says that it's
20 subject to the terms of the will and the will
21 says the property's to be sold if the three boys
22 can't get along, would you agree with me that
23 means that if the property is sold now that would
24 cause the termination of your lease since your
25 lease was entered into subject to the terms, if

Page 102

1 you will?

2 A. No.

3 Q. So you disagree with that?

4 A. Yeah.

5 Q. With respect to your obligations to pay
6 taxes under the 2007 lease, did you pay those
7 directly to the assessor?

8 A. Yes.

9 Q. Not through the trust or through --

10 A. No.

11 Q. -- Beth?

12 And are you current on the taxes?

13 A. Yes.

14 Q. And the lease also required that you
15 maintain some property and casualty insurance.
16 Have you continued to maintain --

17 A. Yes.

18 Q. -- that in place?

19 With respect to the payments that you
20 made to Beth for rent, would that be reflected in
21 the records that you submitted to Mr. Hemmert
22 that he reported on the tax return?

23 A. The -- again. Say that again.

24 Q. The lease says you're to make these
25 lease payments directly to Beth. And so you

Page 103

1 wrote her checks to make those payments?

2 A. Yes. You're -- you're aware of them.

3 We've been to court on that or sign agreement.

4 Q. And so when you wrote the checks, is
5 that part of the information that you take to Mr.
6 Hemmert, and he reports it on the tax return?

7 A. Yes.

8 Q. So if we looked at the tax return, we
9 could rely on that to reflect what lease payments
10 you made and when they were made during the year?

11 A. I'm not sure exactly how he does that,
12 but I'm sure he could --

13 Q. Part of the records he would have?

14 A. Yeah, possibly.

15 Q. As you operate the farm, you have the
16 normal expenses, fuel, repair, maintenance,
17 labor, electrical bills. I couldn't see in any
18 of the lease agreements that the trust had any
19 obligation to pay any of your farm operating
20 expenses. Would it be accurate to say, Jerry,
21 that the trust has not ever paid you for your
22 operating expenses?

23 A. No, they've never paid me for operating
24 expenses.

25 Q. And is it also true that the trust has

Page 104

1 not made any payments on any other bills that you
 2 owe, credit card, notes --
 3 A. No.
 4 Q. -- or anything like that?
 5 Has any of this property that you
 6 leased from the trust been subleased to somebody
 7 else?
 8 A. Last year, my son -- trying to get him
 9 started -- he subleased it.
 10 Q. Okay. What were the terms of the
 11 sublease? This was your son, Jade Albert Beus --
 12 A. Yes.
 13 Q. -- that lives in Jackson?
 14 A. Yes.
 15 Q. What were the terms of the sublease?
 16 A. I believe it was a third and
 17 two-thirds, and I shared in the expense of the
 18 chemicals and stuff.
 19 Q. Was that an oral agreement that you
 20 entered into with him?
 21 A. No. It was written.
 22 Q. Do you have that written agreement?
 23 A. Mm-hmm.
 24 Q. Can you provide it, produce a copy of
 25 that?

Page 105

1 A. Yes.
 2 Q. Okay. Is there any reason that that
 3 wasn't produced today as a part of that request
 4 that you bring all lease information?
 5 A. I thought it was -- you said
 6 information was pertaining to --
 7 Q. The trust?
 8 A. Yeah, the stuff that . . .
 9 Q. When that was subleased to your son,
 10 Jade, did you get the permission to do that from
 11 Mr. Souza?
 12 A. Yes, over the phone.
 13 Q. What were the reasons for that
 14 sublease?
 15 A. He was trying to get started, and I was
 16 trying to help him get started. And at that
 17 time, I just went through a few health problems
 18 and I was trying to recuperate, and trying to see
 19 if he was interested in carrying on the
 20 operation.
 21 Q. Are you back operating it yourself this
 22 year?
 23 A. No.
 24 Q. Who's operating it this year?
 25 A. I've hired some work done, Lakey

Page 106

1 Brothers -- or Dwight Lakey & Sons.
 2 Q. So is it subleased to them for this
 3 year?
 4 A. Yes.
 5 Q. And what -- what's the arrangements for
 6 that?
 7 A. \$60,000 cash lease.
 8 Q. Is that a written lease?
 9 A. Yes.
 10 Q. Have they paid the rent for this year?
 11 A. No.
 12 Q. And can you also produce a copy of that
 13 lease?
 14 A. Okay.
 15 Q. How did you arrive at the \$60,000 lease
 16 amount for this year?
 17 A. I arrived to it, that's what the --
 18 what the land payments would be for 12 months.
 19 Q. That's enough to cover your land
 20 payment?
 21 A. That's --
 22 Q. Is that how you arrived it?
 23 A. Well, that was stretching it. That's
 24 -- I think they offered something like 55.
 25 Q. We'll get into this after lunch. But I

Page 107

1 think you said earlier your bank payments, land
 2 payments to DBL -- is the DBL --
 3 A. Mm-hmm.
 4 Q. -- were approximately 5,000 a month or
 5 a little less?
 6 A. Yes.
 7 Q. So at 60,000 a year, that would take up
 8 all that lease money to pay your loan payments?
 9 A. Right.
 10 Q. And that's what you're going to use it
 11 for?
 12 A. Yes.
 13 Q. So what will be the basis for the
 14 payments of the taxes that you will owe and Beth?
 15 A. Probably the -- the income off of the
 16 other farm I run.
 17 Q. Okay. So did you just lease to Lakey
 18 the farm part of the land?
 19 A. Yes.
 20 Q. And what part of is not leased to them?
 21 The grazing land?
 22 A. Yes.
 23 Q. The pasture land?
 24 A. Yes.
 25 Q. Do they pick up the hay-ground too?

Page 108

27 (Pages 105 to 108)

1 A. There is no hay-ground.
 2 Q. Anything that's farmland is what was
 3 leased to Lakeys for 60,000?
 4 A. Yes.
 5 Q. Does that include all of the irrigated
 6 land?
 7 A. Yes. And I've got to do the
 8 irrigation.
 9 Q. And do you have livestock that you
 10 operate on the rest?
 11 A. No.
 12 Q. Has it been some period of time since
 13 you've had livestock?
 14 A. Yes. Four years or so, something like
 15 that.
 16 Q. Four years ago you sold out all your
 17 livestock, and you haven't had any since?
 18 A. I believe that's correct, yes, in that
 19 neighborhood.
 20 Q. So approximately 2005 when you sold it?
 21 A. 2003, something like that.
 22 MR. BUDGE: Okay. Let's take a lunch
 23 break and back at one.
 24 MR. SMITH: Yeah, that's fine.
 25 (A lunch recess was held.)

Page 109

1 (Exhibit 24 marked.)
 2 (Mr. Cahoon & Mr. Ryan no longer
 3 present.)
 4 MR. BUDGE: Let's go back on the
 5 record.
 6 Q. (BY MR. BUDGE) Well, let's talk about
 7 the rent, then. Under this lease we've been
 8 discussing, the 2007 lease, Exhibit 5, the rent
 9 that would have been owing to Beth was \$12,000.
 10 And Beth died, and so you settled out with her 2
 11 daughters?
 12 A. In 2009.
 13 Q. In 2008.
 14 A. Yeah.
 15 Q. So they got the prorated share of the
 16 2008 rent that would have gone to Beth, went to
 17 her daughters?
 18 A. Yeah.
 19 Q. I don't remember the exact amount, but
 20 it was --
 21 A. Six-thousand-something.
 22 Q. Six-thousand-something.
 23 The other half of the 2008 rent, the
 24 other 6,000, was that paid to the trustee?
 25 A. Yes, to John.

Page 110

1 Q. And when was that paid?
 2 A. Oh, I'm not sure the date.
 3 Q. But in any event, you're saying 2008
 4 was paid in full?
 5 A. Yeah. I think my attorney at that time
 6 recommended John use it for his expense, trust
 7 expenses, if I remember.
 8 Q. Then the rent owing for 2009 to the
 9 trustee, what's been paid in 2009?
 10 A. Five thousand a month, land payments.
 11 Q. No. I mean under the lease agreement
 12 that says you pay -- you're taking the position
 13 that the same 2007 lease agreement's in effect.
 14 What amount's been paid to the trustee of the
 15 12,000 per year?
 16 A. None to the trustee, just the part of
 17 the leases I've been paying the 5,000 a month on
 18 the land payments to the trustee.
 19 Q. So you've been paying the payments of
 20 5,000 a month, whatever it is, on --
 21 A. To DBL.
 22 Q. -- the DBL loan?
 23 A. Yes.
 24 Q. And that's the payment on the loan that
 25 was your operating expense --

Page 111

1 A. Operating -- it was a recovery of --
 2 Q. And before we leave the leases, when
 3 your son -- you subleased to your son in 2008.
 4 You said you got oral permission from John
 5 Souza --
 6 A. Yes.
 7 Q. -- to do that?
 8 A. I called him, and he said --
 9 Q. And you got oral permission from him in
 10 2009 to lease to Lakeys?
 11 A. Yeah. He didn't -- my lawyer advised
 12 me to that -- which was Clyde -- to just get a
 13 written agreement that they -- that I hired him
 14 to do it.
 15 Q. And with the payments from Lakey of
 16 60,000, I think you said you hadn't got any yet?
 17 A. No.
 18 Q. And when is that due?
 19 A. It's due in, I think, December --
 20 January, December.
 21 Q. And when you bring the lease agreement
 22 with your son and with the Lakeys, it will
 23 reflect for sure --
 24 A. Yeah.
 25 Q. -- what the terms are and what's due?

Page 112

28 (Pages 109 to 112)

1 A. Yeah.
2 Q. We can double-check it then.
3 So with the payments on the note and
4 mortgage DBL of 5,000 a month, that would take up
5 all of the rent money you'd get from Lakeys;
6 correct?
7 A. Yeah. Yeah, this year. The main
8 reason I leased it to Lakeys this year is because
9 it was under a lawsuit, and I couldn't -- I
10 couldn't borrow the money to operate; no bank in
11 the country -- let me operate or wanted to get
12 involved in a lawsuit like that.
13 Q. So do you think that rent of 60,000 a
14 year to Lakeys is a fair and reasonable rent for
15 the farmland?
16 A. It was probably more than -- than they
17 get as a -- more than what you would get normally
18 because the price of wheat has doubled what it
19 was 2 or three years ago.
20 Q. And how was that 60,000 cash rent
21 arrived at between you and Lakeys?
22 A. Well, I think they started at 50,000,
23 and I said I needed more than that to even cover
24 the bills.
25 Q. You testified earlier there was 1250

Page 113

1 tillable and 750 irrigated?
2 A. Mm-hmm.
3 Q. Would that be the land the Lakeys are
4 running, 2,000 acres?
5 A. Twelve -- 1250 acres are running.
6 Q. Just the tillable?
7 A. Just the tillable.
8 Q. Not the irrigated?
9 A. Not -- yeah, the irrigated is
10 tillable --
11 Q. Okay.
12 A. -- Randy.
13 Q. So when you gave me the number earlier
14 1250 acres of tillable, that included the 750
15 irrigated?
16 A. Yes.
17 Q. Okay. So the 1250 tillable lease rate
18 is approximately \$50 per acre. A little bit --
19 A. Approximately.
20 Q. -- less than 50.
21 And did you discuss the lease in terms
22 of an amount per acre?
23 A. No.
24 Q. Do you have reason to believe that that
25 roughly \$50 per acre is a fair and going price in

Page 114

1 the area for tillable land?

2 A. This year, yes, because the prices are
3 -- of the wheat is, like I say, \$8, when it was
4 three -- or 2 and a half, \$3 a couple of years
5 ago.

6 Q. So with the revenue from the Lakey
7 lease going entirely to the DBL note payment, are
8 you going to be able to pay the 2009 real
9 property taxes?

10 A. Yes.

11 Q. And what will be your source of income
12 for that?

13 A. It will be the income that I derive
14 from selling some hay and some stuff off of
15 Stoddard ranch.

16 Q. From your other leased property?

17 A. Yes.

18 Q. And will that be the source of income
19 for paying the 12,000 rent to the trust?

20 A. Yes.

21 Q. And so you anticipate paying that to
22 the trust at some point?

23 A. Yes.

24 Q. And I don't see that the 2007 lease
25 provides a date that that rent is due to the

Page 115

1 trust. When did you anticipate paying the 12,00
2 to the trust?

3 A. December 31st.

4 Q. Have you had any conversations with
5 Dallas or Doug regarding the operation of the
6 farm?

7 A. We've talked -- I'm not sure that we've
8 talked about the operation of the farm, but I
9 can't recall. Maybe we did say something.

10 Q. Do you recall any conversations with
11 Dallas or Doug regarding the 2007 lease?

12 A. Not really. I don't recall any.

13 Q. Any conversations with them in securing
14 their approval of the 2009 lease to Lakeys?

15 A. No, I didn't. As far as I know, I
16 didn't. We didn't have any conversations.

17 Q. Do you recognize that they have an
18 interest in that property as the residual
19 beneficiaries --

20 A. Yes

21 Q. -- to your dad's trust?

22 A. Yes.

23 Q. Okay. Any conversations with Doug or
24 Dallas regarding the listing and the sale of the
25 property?

Page 116

29 (Pages 113 to 116)

1 A. You asked me them questions, and you
2 advised them not to talk to me. Why do you ask
3 me these questions like that? They're not to
4 talk to me --

5 MR. SMITH: Just answer his question.

6 THE WITNESS: Pardon? Rephrase that
7 question.

8 Q. (BY MR. BUDGE) Well, the question was
9 just whether you had any discussions with Doug
10 and Dallas --

11 A. I can't -- I can't talk direct to them.
12 They said that you advised them not to talk to
13 me.

14 Q. So that -- your answer would be no,
15 then; you haven't had any discussions --

16 A. No. The answer is no.

17 Q. -- with -- okay.

18 Jahnene is going to get mad at both of
19 us. You've got to let me finish the question
20 before you answer.

21 A. Okay. Okay.

22 Q. Let's turn now to some of the loans.
23 If you look to Exhibit 6, I think you'll
24 recognize this, Jerry, is a loan, a promissory
25 note that you secured from Ireland Bank. The

Page 117

1 note's dated June 7th, 2002, in the amount of
2 \$372,740, and you're paying interest of
3 7.75 percent. Do you recognize that as the loan
4 you secured from Ireland Bank?

5 A. No, I didn't sign that note. Up there?

6 Q. Look at the bottom right corner of each
7 of those pages. And then on page 3, is
8 that --

9 MR. SMITH: You're looking at the wrong
10 one. This one.

11 Q. (BY MR. BUDGE) -- not your signature
12 on page 3?

13 A. That's my initials, yes.

14 Q. Then turn to page 3. Is that your
15 signature?

16 A. Is this -- yeah, that's my initials,
17 that's my initials, page 2. Page 3 is -- yeah.

18 Q. That's also signed by Tom McBride on
19 behalf of the lender Ireland Bank; correct?

20 A. Yes. Yes.

21 Q. Is he the loan officer that you were
22 working with at that time?

23 A. Yes.

24 Q. And did you have a prior loan history
25 are Ireland Bank before you signed this

Page 118

1 promissory note in 2002?

2 A. Yes.

3 Q. How long had you been banking with
4 Ireland Bank?

5 A. Since FDIC shut down Security State
6 Corporation -- or Security State Bank. Ireland
7 Bank took them over, and I was one of the --

8 Q. Since First Bank and Trust?

9 A. No. I was with First Bank and Trust
10 when the FDIC took them over.

11 Q. Okay.

12 A. And then Security State Bank had banks
13 all through Southern Idaho.

14 Q. Okay. First Security State Bank was
15 acquired by Ireland Bank?

16 A. Basically. They're in the same
17 building. I don't know what happened.

18 Q. Let me just ask you this: How long had
19 you been banking with Ireland Land Bank before
20 this 2002 loan?

21 A. Oh, probably eight years.

22 Q. Did you bank with anybody else?

23 A. Yeah. I banked with Security State,
24 and I banked with First Bank and Trust.

25 Q. And did you bank with all three of

Page 119

1 those entities after you entered into the lease
2 agreements with the trust?

3 A. Yeah. When they changed -- FDIC shut
4 one down -- shut First Bank and Trust down. I
5 went to Security State, and Security -- when they
6 shut Security State down, I went to Ireland Bank.

7 Q. Okay. So from 1986 on, when you began
8 leasing --

9 A. And I don't know the exact year that
10 they shut them banks down, but that's the way it
11 was.

12 Q. And were these banks providing your
13 normal agricultural operating loans so you could
14 operate the farm?

15 A. Yeah. Yeah, pretty much, yeah.

16 Q. And did this particular loan that we're
17 referring to, Exhibit 6, to Ireland Bank, the
18 372,740 loan, was that your operating expenses
19 for one year?

20 A. No.

21 Q. Or did that include prior loans that
22 had been rolled over from year to year?

23 A. It included some prior loans I used for
24 improvements and that.

25 Q. So was this particular loan, then, in

Page 120

1 part for operating funds this year and part of
 2 rollover of funds for prior years?
 3 A. No. I think there was -- went through
 4 another one here that was 290,000.
 5 Q. Yeah. Turn to Exhibit 9, then.
 6 A. Okay. That was the operating and --
 7 Q. Exhibit 9 shows a second loan of exact
 8 same date, same interest rate with Ireland Bank,
 9 and that amount is 235,000.
 10 A. Yeah, that was the operating.
 11 Q. That was the operating loan. And the
 12 372,740 loan, Exhibit 6, that was your rollover
 13 or refinancing of previous loans?
 14 A. Yes. Yes.
 15 Q. If you'd look at the next Exhibit 7,
 16 it's a letter that was sent by --
 17 A. Which? Ten or 11?
 18 Q. Seven?
 19 A. Seven.
 20 Q. Go back to 7.
 21 If you look at that letter from Mr.
 22 McBride that was sent to us where we inquired
 23 about these loans, read the second paragraph. He
 24 says, "The loans pertaining to these mortgages
 25 were to term out past operating lines of credit

Page 121

1 and the second one was for cross
 2 collateralization of a new operating line of
 3 credit." That's --
 4 A. I don't know what --
 5 Q. Would you basically agree with that?
 6 That seems to be what you just said; one loan was
 7 to term out prior loans, and the second note we
 8 referred to exhibit --
 9 A. No, I wouldn't agree to that. It's --
 10 it didn't -- it wasn't past operating lines; it
 11 was the past loans. Some of them were
 12 improvements and all sorts of -- there was three
 13 or four loans. It was all put together.
 14 Q. Okay. Jerry, you're giving me 2
 15 different answers. So let's go back again, and
 16 put a finger on the note under Exhibit 6. That's
 17 the 372,740.
 18 A. Okay.
 19 Q. Okay? And you said there was a second
 20 note. Flip over to Exhibit 9. And you said,
 21 yeah. And that's the second loan, both Ireland
 22 Bank, both the same date. And when you testified
 23 a minute ago, you said Exhibit 9 was your new
 24 operating loan, and Exhibit 6 was a term-out of
 25 prior loans?

Page 122

1 A. Yeah, I did a term-out of prior loans,
 2 not a term-out of prior operating loans.
 3 Q. Okay. Term out of prior loans, then?
 4 A. Yeah.
 5 Q. And so when you now look at Mr.
 6 McBride's letter, Exhibit 7, in the second
 7 paragraph, isn't he saying the exact same things;
 8 "The loans pertaining to these mortgages were to
 9 term out past operating lines of credit and the
 10 second one was for cross collateralization of a
 11 new operating line of credit"?
 12 A. No, we ain't saying the same thing.
 13 He's saying it's term-out past operating lines,
 14 and I'm saying term-out past debts from
 15 improvements --
 16 Q. Okay.
 17 A. -- and operating lines.
 18 Q. What were the past debts that were --
 19 you're referring to?
 20 A. There was -- there was several notes
 21 involved in that, and I haven't got them with me
 22 or probably, maybe don't even have them. But
 23 there was several different notes and debts,
 24 pumps, and --
 25 Q. So you're just characterizing some of

Page 123

1 the loans -- prior loans were regular operating
 2 lines and some were for purchase of other things,
 3 equipment and the like?
 4 A. Not for purchase equipment.
 5 Improvements and burying main lines and doing --
 6 keeping the --
 7 Q. So now --
 8 A. Putting roofs on buildings and all
 9 that.
 10 Q. Now, look at the next paragraph in Mr.
 11 McBride's letter, Exhibit 7. The first sentence
 12 says, "The new operating line of credit was paid
 13 off by Jerry Beus."
 14 Do you agree with that, that you paid
 15 off the new operating line?
 16 A. Yeah.
 17 Q. In the next sentence he says, "The term
 18 loan was paid off by the Lynn G. Beus Trust."
 19 A. Yeah.
 20 Q. Why is it -- was the trust paying off
 21 your loan?
 22 A. Because the bank called in and called
 23 the loan in.
 24 Q. Meaning they wanted you to pay off your
 25 loan?

Page 124

31 (Pages 121 to 124)

1 A. Yeah, in full.
 2 Q. And you had no ability to pay it?
 3 A. And -- yeah, I called it, and I thought
 4 they were going to give me a new operating line.
 5 And they said, "No, we want you to pay the other
 6 one."
 7 Q. Basically Ireland Bank was saying they
 8 didn't want to do business with you anymore?
 9 A. That's pretty much the size of it.
 10 Q. And when you said "they called in the
 11 loan," meaning, they said, we want to be paid
 12 off?
 13 A. Right.
 14 Q. And if they weren't paid off, was it
 15 your understanding they would foreclose the
 16 mortgage?
 17 A. More or less, that was my
 18 understanding.
 19 Q. Now, let's look at Exhibit 8. While
 20 you're also looking at Exhibit 8, look at
 21 Exhibit 10. Those are both real estate mortgages
 22 in favor of the trust -- excuse me -- in favor of
 23 Ireland Bank that were signed by the trust to
 24 secure those 22002 promissory notes we've just
 25 been discussing; correct?

Page 125

1 A. That's what it appears to be, yes.
 2 Q. So isn't it correct, Jerry, that
 3 Ireland Bank was not willing to loan anymore
 4 money to you unless you were able to put up some
 5 collateral?
 6 A. Yes, that's about the way the --
 7 Q. And so you went to the trustee, John
 8 Souza, and were able to talk him into putting a
 9 mortgage against the trust property to secure
 10 loans that went to you to operate and to trim out
 11 your prior loans?
 12 A. Well, I don't know. I -- I think that
 13 John -- yeah, he -- he basically -- I believe it
 14 says in the will that along with him in order to
 15 operate the farm --
 16 Q. No, I'm not asking your interpretation
 17 of the will or the trust, Jerry.
 18 A. Okay.
 19 Q. I'm asking you: How did it come about;
 20 why was it that John Souza was willing to sign --
 21 if you know, why did John Souza sign a mortgage,
 22 sign 2 mortgages --
 23 A. Well, he had to do that to --
 24 Q. Just a minute. Just an minute.
 25 Ireland Bank was no longer willing to

Page 126

1 finance you in 2002. You needed to term out your
 2 prior notes; you needed a new operating loan, and
 3 the bank said we aren't going to do business
 4 anymore unless you can put up the land as
 5 security by way of a mortgage; correct? Isn't
 6 that what the bank was telling you?

A. Yeah, I guess.

8 Q. And so then did you go to John Souza or
 9 call him up or make an appointment and say,
 10 "John, I'm in trouble. I can't get my operating
 11 financing, and they're going to foreclose on my
 12 prior loans unless you put the trust property
 13 up"? Is that the conversation you had with John?

14 A. No. I first got a hold of Doug and Dal
 15 to see if they would -- I had a loan lined up
 16 through the Federal Land Bank at five and some
 17 percentage interest, and I went and called them
 18 and asked them if they would sign because the
 19 Federal Land Bank wanted all three of our
 20 signatures.

21 Q. In other words, Federal Land Bank would
 22 only loan money to you if you could put up the
 23 trust land as security; correct?

A. For a mortgage, yes.

Q. And Federal Land Bank knew that you

Page 127

1 couldn't mortgage the trust land because you
 2 didn't own it? And that's why they went -- they
 3 said, if you can get all three of the
 4 beneficiaries to sign, then we'll make you a
 5 loan?

6 A. I don't believe that -- that was it.
 7 They wanted all three because when the trust
 8 developed --

9 Q. And it's true, isn't it, Jerry, that
 10 prior to this 2002 mortgages, that we're
 11 discussing, there'd never been a time prior to
 12 that that the trust property had been mortgaged
 13 as security for your loans?

A. I believe that'd be right.

16 Q. And when you were leasing from your
 17 father before his death, is it true that he never
 18 mortgaged his property to secure your operating
 19 loans?

20 A. I believe he cosigned the first year or
 21 2, something like that, but . . .

22 Q. Maybe cosigned a not, but he didn't
 23 mortgage his land for your personal debt?

A. No.

24 Q. So did you have a discussion with John
 25 Souza and said, you're going to be foreclosed or

Page 128

1 by the bank unless I can get new financing and
2 you'll provide a mortgage? What was your
3 conversation with John Souza?

4 A. I guess it was about like that, yeah.

5 Q. That would have been just before --
6 sometime before this note was signed, these 2
7 notes were signed in June 7th of 2002?

8 A. Yeah.

9 Q. So have you signed the notes, the bank
10 -- or the trustee, John Souza, signs the mortgage
11 to put your dad's property and trust as security
12 for your loans?

13 A. Mm-hmm.

14 Q. Is there any question in your mind,
15 Jerry, that you were the one responsible to make
16 the payments?

17 A. Yeah.

18 Q. There is a question in your mind?

19 A. Mm-hmm.

20 Q. Explain that me. Who else was supposed
21 to pay the notes that you signed besides you?

22 A. Well, most -- a lot of that \$300,000
23 note went for improvements to bring the land
24 value up, and it was just --

25 Q. Well, there isn't anything in any lease

Page 129

1 agreement in effect in 2002 that would say:
2 Jerry, go make some improvements, and we'll pay
3 for it. You admitted that earlier; correct? So
4 what is the basis that you believe the trust is
5 supposed to make the payments on your 2002 notes?

6 A. Because it benefited the trust ground.
7 It brought the value up.

8 Q. Just because you like it?

9 A. Yeah. Yeah.

10 Q. You didn't make any written agreement
11 with your mother or with Doug or with Dallas?

12 A. Beth and I -- Beth and I talked over
13 about everything that went on, yes. She was --
14 she was sitting in the same office the day that
15 was signed.

16 Q. So --

17 A. In fact, she had to sign a quitclaim
18 deed to get it signed.

19 Q. Suddenly in 2002, that's the first time
20 that you believe that all of the debts you
21 incurred previously for operating somehow now
22 became the trust's debt, too?

23 A. I offered to bow out, because I wasn't
24 even making a living, to speak of. And Beth
25 said, "If your dad heard that, he'd kick your

Page 130

1 ass. You go to stay in."

2 Q. Is it true, Jerry, that the trust never
3 made a single payment under any of these loans to
4 Ireland Bank either before or after these 2002
5 promissory notes?

6 A. It was understood between the trustee
7 and myself that I would -- that would be part of
8 the lease; I would pay them.

9 Q. Okay. Let me ask you the same question
10 again. I'm asking: Is it true that the trust
11 never made one payment ever on any note you
12 signed to Ireland Bank? I think you can answer
13 that yes or no.

14 A. I'm not sure. You'd have to check with
15 the trustee.

16 Q. Well, you're making the payments to the
17 trustee. Was there ever a payment that would
18 have allowed them to make a payment to Ireland
19 Bank on a note of this nature?

20 A. I was making the payments to Beth, and
21 by that time we'd had an agreement between us,
22 all of us that --

23 Q. Well, I looked at the note -- the first
24 note we looked at, Exhibit 6, the 272,000 note,
25 provided for annual payments of \$49,912.09. Now,

Page 131

1 are you trying to tell me that you reasonably
2 expected that Beth, who --

3 A. I'm not trying to tell you anything.

4 Q. -- Beth wanted a certain amount of
5 income from you, could take that payment that you
6 were supposed to be making then, the 23- or
7 25,000, and be able to make a 40 -- almost
8 \$43,000 payment? How would she possibly make
9 those kind of payments?

10 A. I'm not trying to tell you anything,
11 Randy. I'm just trying to answer your questions.

12 Q. Let's look at Exhibit 11. So would the
13 bank records reflect what payments you made to
14 Ireland Bank under these 2002 loans?

15 A. I wouldn't know.

16 Q. Do you have records that reflect what
17 payments you made?

18 A. I don't think so.

19 Q. You have no records?

20 A. Hmm-hmm.

21 Q. Did Ireland Bank call those loans due
22 at some point by reason of nonpayment?

23 A. Yes. Yes.

24 Q. Is that --

25 A. Now, wait. I think I paid the one off,

Page 132

1 didn't I? I can't remember. You'll have to get
 2 Ireland Bank.
 3 Q. But at some point Ireland Bank said,
 4 we're calling the loan, and we're not going to
 5 finance you anymore; correct?
 6 A. Pretty much, yes.
 7 Q. And even with the mortgage against the
 8 trust property, they wanted you to go do your
 9 business elsewhere?
 10 A. Yes.
 11 Q. And was that because your debts and
 12 loan balances had been increasing year-in
 13 year-out --
 14 A. I don't know.
 15 Q. -- all the years you did business?
 16 A. I can't -- I don't know what it was
 17 for. You ask them, not me, because they're the
 18 ones that made that decision.
 19 Q. Well, was it true that the amount of
 20 debt that they were carrying with you was going
 21 up year after year after year?
 22 A. Yes, it was, because fertilizer, when I
 23 first started farming, was \$80 a ton, and it goes
 24 to 800 or 900 a ton. And fuel rose from 17 cents
 25 a gallon to \$3-and-something a gallon, and --

Page 133

1 yes.
 2 Q. Let's look at Exhibit 11. So next, did
 3 you contact this DBL Company, Inc., to see if
 4 they would finance you?
 5 A. Yes.
 6 Q. And when did you contact them?
 7 A. I didn't. There was a -- there was a
 8 guy that -- that was in that business that I
 9 contacted them right after Douglas and Dallas
 10 refused to help on the ranch, to sign the 5
 11 percent loan.
 12 Q. Who's the person?
 13 A. I forget his name now. But I can --
 14 he's still -- it will probably be on the records
 15 of the -- have you got a copy of the -- of the --
 16 Q. But just so I understand what happened,
 17 at some point Ireland Bank said you need to
 18 refinance; we're not going to finance you
 19 anymore. So you were out looking for a new
 20 lender?
 21 A. Yes.
 22 Q. And you -- you got a hold of somebody
 23 to assist you in locating new financing?
 24 A. Yes.
 25 Q. And they put you in contact with DBL

Page 134

1 Company, Inc.?
 2 A. Right.
 3 Q. And the address here shown on their
 4 promissory note, Exhibit 11, shows 4444 Hillcrest
 5 Drive in Boise. Did you ever go to their
 6 business --
 7 A. No.
 8 Q. -- address?
 9 A. No.
 10 Q. Was that an individual that was making
 11 the loan through that in --
 12 A. It turned out to be, I think, an
 13 individual. Basically I never had nothing else
 14 to do with it.
 15 Q. Did you ever meet the individual?
 16 A. Yeah, I did. He came out and looked at
 17 the ranch. He --
 18 Q. What was his name?
 19 A. He's from that area. He was a Panning.
 20 He was related in some way or the other to the
 21 Pannings' neighbors.
 22 Q. What was his name?
 23 A. I don't -- have you got a copy of that
 24 note there?
 25 Q. Yeah, that's the one we're looking at,

Page 135

1 Exhibit 11.
 2 A. I think it probably might be on there.
 3 Isn't it?
 4 Q. You're not remembering his name?
 5 A. Huh?
 6 Q. You're not remembering his name?
 7 A. No. I -- I didn't really have anything
 8 to do after that until, you know, after I talked
 9 to them, and then John -- and then they -- they
 10 pretty well done everything else. I went in to
 11 sign some papers, and they said, you don't even
 12 need to sign nothing; you just -- and then
 13 they --
 14 Q. Basically your understanding, though,
 15 that this DBL loan, Exhibit 11, promissory note
 16 that was dated May 2nd, 2007, was to pay off what
 17 you owed to Ireland Bank --
 18 A. Well --
 19 Q. -- among other things?
 20 A. -- 320,000 of it was to pay off what I
 21 owed Ireland Bank. The rest of it was loan fees
 22 and stuff like that.
 23 Q. That would be reflected on the closing
 24 statement.
 25 A. Have you got it?

Page 136

1 Q. So did you talk with anybody with DBL
2 about the fact that they wanted the trust to sign
3 the note and put up the land as security for your
4 loans?
5 A. No, I didn't. I didn't -- like I said,
6 after I -- I got in touch with the guy that got
7 me in touch, it was pretty -- I -- they didn't
8 even ask me any questions.
9 Q. Do you have any reason to question the
10 amount of the loan? How did they arrive at the
11 400 --
12 A. I was a little shocked.
13 Q. Jerry --
14 A. Excuse me.
15 MR. SMITH: Let him finish.
16 Q. (BY MR. BUDGE) How did they arrive at
17 the amount that was to be loaned here, 427,500?
18 A. I don't know how they arrived at that
19 because I owed -- I think it was 320,000. It
20 must have been loan fees and different things
21 like that.
22 Q. Well, let's look at the actual dollar
23 amounts rather than have to rely on memory. Look
24 at Exhibit 12. It was the closing statement. It
25 was prepared by the settlement agent, Caribou

Page 137

1 Title, pertaining to this note settlement on May
2 3rd of 2007. You'll see it shows the Lynn Beus
3 Trust in care of John Souza as the borrower and
4 DBL Company as the lender. Do you see that,
5 Jerry?
6 A. Yeah.
7 Q. And if you look at line 104, it shows
8 Ireland Bank is going to receive \$332,141.66?
9 A. Mm-hmm.
10 Q. Would that be the pay-off of your prior
11 notes to Ireland Bank?
12 A. Yes.
13 Q. And the number immediately above that
14 shows that the total settlement charges were
15 77,204.50. Do you see that?
16 A. Yup.
17 Q. If you look on loans on the second
18 page, it tells you where did all those settlement
19 charges of 77,204.50 come from. And if you look
20 at line 801, it shows there was a 5 percent
21 origination fee of 21,375. Do you see that?
22 A. Yup.
23 Q. And then line 103 shows that there had
24 to be a year of interest prepaid at 52,500?
25 A. Yup, I see that.

Page 138

1 Q. And then there's a bunch of other usual
2 charges. But in total, they come to \$77,204.50,
3 are the costs involved in getting financed with
4 DBL; correct?
5 A. Yup.
6 Q. And did you see this settlement
7 statement --
8 A. No.
9 Q. -- before the closing?
10 A. Never did.
11 Q. Did you ever see the promissory note,
12 Exhibit 11, before it --
13 A. No.
14 Q. -- was signed?
15 A. No.
16 Q. How did it come about that Mr. Souza as
17 trustee of the trust was willing to sign a note
18 and signed a settlement statement and the
19 following mortgage of DBL, which is Exhibit 13,
20 for 427,500 in order to pay off your loans with
21 Ireland Bank? How did that come about? Did you
22 have conversations with Mr. Souza?
23 A. I believe we covered this once.
24 Q. Pardon?
25 A. Didn't we cover this once?

Page 139

1 Q. No.
2 A. Okay.
3 Q. I don't think so.
4 A. Okay.
5 Q. We covered the prior mortgage that
6 Souza put up for the notes you signed. We
7 haven't discussed --
8 A. Okay.
9 Q. This is the first time now the trust
10 not only puts up the land by mortgage, it also
11 signs the note. So this is the first time we're
12 dealing with this particular DBL loan in May of
13 2007.
14 A. Okay.
15 Q. So how did it come about? Did you have
16 conversations with Mr. Souza saying: I can't get
17 refinanced with Ireland Bank anymore. I've got a
18 loan lined up with DBL through this loan broker
19 or mortgage broker -- that you were talking to
20 whose name you don't recall -- and we need the
21 trust to sign the note and mortgage? How did
22 that come about?
23 MR. SMITH: Before you answer that.
24 Object to the form. Assuming a lot of facts not
25 in evidence.

Page 140

1 THE WITNESS: Do you want to ask him a question?
2 MR. SMITH: Go ahead and answer it.
3 Q. (BY MR. BUDGE) Did I lose you on it?
4 A. Yeah.
5 Q. What conversations did you have with
6 John Souza that gave rise --
7 A. I just --
8 Q. Just a minute.
9 MR. SMITH: Let him finish the
10 question.
11 Q. (BY MR. BUDGE) What conversations did
12 you have with him that gave rise to him signing
13 the note and mortgage to DBL?
14 A. I just went to him and said Ireland
15 Banks through; they -- they want -- want some
16 refinancing.
17 Didn't we go through this?
18 Q. Not on this DBL loan. We went through
19 it on the refinancing with Ireland Bank.
20 A. Oh.
21 Q. I haven't talk to you about the DBL
22 loan.
23 So you went to John and told him that
24 Ireland Bank wanted to be paid off?
25 A. Mm-hmm.

Page 141

1 Q. And you found another person, another
2 entity, DBL, that will loan you the money?
3 A. Yeah, after I talked to Doug and Dal.
4 Q. Okay. And Doug and Dallas were not
5 willing to be a part of it?
6 A. No, they didn't want -- weren't willing
7 to be a part of it.
8 Q. They just didn't want to put the farm
9 up for security for your loans. Is that
10 basically --
11 A. That's -- that's probably -- I don't
12 know what was going through their mind, but --
13 Q. So let's go back to where --
14 A. I know one thing. It was going up
15 about 10 percent in value a year. And to dump it
16 at that time -- I think it was appraised at 1.2
17 million.
18 Q. Okay. Let's go back to where we left
19 off. You went to your mortgage broker -- whoever
20 was trying to line up money for you -- they lined
21 up DBL. The guy that's behind that that has the
22 money came and met with you. So then you went to
23 Souza and said --
24 A. He just lined up -- the guy that I met
25 with just says there's a guy up there that's

Page 142

1 lending private money and that's his business,
2 and I think I can get you -- but the interest
3 will be --
4 Q. Then you went and had a conversation
5 with John Souza?
6 A. I called him and said -- and then
7 that's about all I had to do with it.
8 Q. And you asked John if he would sign the
9 note and mortgage on behalf of the trust so that
10 DBL would put up the money to pay off your loans
11 at Ireland Bank?
12 A. So that DBL would put up the money to
13 pay the loans at Ireland Bank.
14 Q. And what did John respond and say? He
15 said "fine"?
16 A. Yeah.
17 Q. Was there any discussions about the
18 amount, the 427,500?
19 A. I told John what I needed -- what the
20 pay-off was at Ireland Bank, and then he took it
21 from there, I guess.
22 Q. The note has interest at 14 percent.
23 So you went from seven and three-quarters to
24 14 percent. Did that cause you any concern?
25 A. Oh, it sure did. I brought that to

Page 143

1 Doug and Dallas' attention. Yes, it did.
2 Q. Did you bring it to John Souza's
3 attention? Did you ever tell him not to sign the
4 note and borrow the money because the interest
5 was too high?
6 A. No, because the only option he had was
7 sell the ranch.
8 Q. Okay.
9 A. And it was appraised at 1.2 million at
10 the time. And it was going up 10 or 12 percent a
11 year.
12 Q. You didn't ever look at the note before
13 it was signed, then?
14 A. I didn't get to look at it.
15 Q. Were you aware that there's a
16 prepayment penalty of 3 percent if you pay it off
17 early?
18 A. Hmm-hmm, I'm not aware.
19 Q. Were you aware that if there's a
20 default, that they can raise the interest rate
21 another 5 percent, that's in paragraph 6?
22 A. No, I'm not aware.
23 Q. Let's look at that settlement statement
24 we were discussing further, Exhibit 12. On that
25 first page, we were discussing you had the

Page 144

1 settlement charges that need to be paid, the
2 77,204.50; Ireland Bank got paid off \$332,141.66.
3 And down at the bottom of the line 303, it shows
4 the cash to the borrower of \$18,153.84. Did that
5 money come to you, Jerry?

6 A. I think part of it did, not all of it.

7 Q. You think part of it did?

8 A. Yeah. The title company called me and
9 says: We've got extra money after everything's
10 done. And John says it should go to you, I
11 guess. If my memory's correct, it was eight or
12 10,000 that went to me.

13 Q. Where did the rest go?

14 A. I --

15 Q. How did it come to you?

16 A. I think they either mailed me a check
17 or I went in and picked up the check or
18 something.

19 Q. Well, let's go back further and look at
20 Exhibit 14. That appears to be a letter to
21 Caribou Title, signed by Mr. Souza, that says all
22 cash amounts to the trust may be paid directly to
23 Jerry Beus.

24 A. Where's it say --

25 Q. Fourteen, the back tab 14.

Page 145

1 A. Yeah, I believe there is a thing in
2 there. It says, "Any and all payments that may
3 be done in real property annually."

4 Q. Point out where you're referring to.

5 MR. SMITH: Number 3.

6 Q. (BY MR. BUDGE) Okay. That's back to
7 the page 2 of the 2007 lease. I asked you before
8 what that meant, "Any and all payments may be
9 done in the real property annually." So you're
10 saying what that means is the lease required you
11 to pay the DBL payments?

12 A. "Any and all" -- whatever it says there
13 is what it means.

14 Q. Do you have any knowledge or
15 recollection how that language got put into the
16 lease agreement? Or if that's something I need
17 to ask Mr. Souza about?

18 A. It's probably best to . . .

19 Q. Let's look at Exhibit 15.

20 Before we go on with that, based on
21 your testimony you've just given, you're now
22 saying the lease obligates you to pay the DBL
23 loan?

24 A. Basically -- I don't know if that's
25 what the lease --

Page 147

1 MR. SMITH: Exhibit 14.

2 THE WITNESS: Yeah, that's what it
3 says.

4 Q. (BY MR. BUDGE) But you're saying that
5 Caribou Title didn't follow the instructions, and
6 you didn't get the 18,153.84?

7 A. Evidently I did. I'd have to look. I
8 didn't -- I didn't know there was even going to
9 be any extra. I didn't apply for the loan or
10 draw up the papers or sign it or anything.

11 Q. So now we have a note and mortgage
12 signed by the trust to DBL. Is it true that the
13 trust has never made a payment to DBL; that
14 you've made all the payments that have been made?

15 A. I made them at the direction of the
16 trust as part of my lease, yes.

17 Q. Okay. What lease is that?

18 A. That would have been the -- the last
19 lease.

20 Q. The 2007 lease?

21 A. Yeah.

22 Q. Can you point to some language in the
23 2007 lease that says that you're supposed to pay
24 the trust DBL payments, which come to, what,
25 60,000 a year?

Page 146

1 Q. That's what you just told me; that's
2 what you interpreted it to mean, that you're
3 supposed to pay under the terms of the lease the
4 DBL loan?

5 A. That's --

6 MR. SMITH: You're not letting him
7 answer the question.

8 Go ahead and answer.

9 THE WITNESS: Would you rephrase that,
10 please?

11 Q. (BY MR. BUDGE) Yeah. When I asked you
12 the question where does the lease show you're
13 supposed to pay the loan, you pointed at the top
14 of page 2 --

15 A. Well, that's the way I interpret --

16 Q. Just a minute, Jerry, so you have that
17 in front of you, which is -- let me get it for
18 you so we're looking at the same document --

19 MR. SMITH: He's got it.

20 Q. (BY MR. BUDGE) Exhibit 5, top of page
21 2. Do you recall the question, I said: Where in
22 the 2007 lease does it say you're supposed to pay
23 the DBL loan as a part of your rent? And you
24 said it's that language there on the top that --

25 A. I think it is.

Page 146

1 Q. Says, "Any and all payments that may be
2 done in the real property annually."

3 A. Yeah, I think that's what that means, I
4 would suspect. I don't . . .

5 Q. Well, is that the language in the lease
6 that you believe means that you're supposed to
7 make the DBL payments?

8 A. That's -- yes, that's the way I . . .

9 Q. So at the end of the day, even though
10 Mr. Souza as trustee signed this 14 percent
11 interest rate note with these amounts in there,
12 it's your belief that you're the one that's
13 supposed to pay that loan?

14 A. As -- as --

15 Q. The part of the lease agreement?

16 A. As part of the lease agreement.

17 Q. Okay. And accordingly, any payments
18 that have been paid to DBL, have been made by
19 you?

20 A. Yes.

21 Q. Now, let's look at Exhibit 15. Do you
22 recognize that as an escrow history report from
23 Caribou Land Title on the DBL loan?

24 A. Yeah. I don't understand these too
25 much. I recognize it coming from Caribou Land

Page 149

1 of '09, the \$438,376 balance, would indicate that
2 you owe now in May of 2009, some 10,000 or more
3 on that note than was owed when it was signed in
4 May of '07?

5 MR. SMITH: Wait a minute. Say that
6 again. I don't understand.

7 Q. (BY MR. BUDGE) Well, this escrow was
8 -- let me rephrase that.

9 This Caribou Title's escrow showed on
10 April 14th, '09, you owed 438,376. That was the
11 principal balance. The note on its face, which
12 is Exhibit 11, when the note was signed by Mr.
13 Souza May 2nd of '07, the loan was 427,500. In
14 other words, the principal balance is more now
15 than what was owing at the time the note was
16 signed.

17 A. Yeah. I didn't sign the note. I don't
18 know what the -- the thing was. At one time they
19 said that Caribou Land Title made some mistakes
20 and something. I haven't been privy to that
21 stuff.

22 Q. Have you paid every monthly payment
23 since the --

24 A. Yes.

25 Q. -- note was signed in May of '07?

Page 151

1 Title.

2 Q. Well, in the top right, it has a date
3 on it of April 14th, 2009. And I'll represent to
4 you this was provided to your former attorney,
5 Mr. Nelson, so you may or may not have seen it.
6 But if I understand how it was explained to me by
7 Caribou Title, Jerry, it would show that as of
8 that date, April 14th, 2009, there's a balance --
9 it's called principal balance -- shown on the
10 bottom right corner, \$438,376?

11 A. That's what it says here.

12 Q. And it would reflect also the last
13 payments you made, which would have been February
14 25th, 2009, for 4,992.50. That's basically the
15 monthly payment?

16 A. I see something here, 03/20/09 and
17 04/10/09.

18 Q. Right. 02/25/09 and 03/20/09 and
19 04/10/09 would have been the same payment amounts
20 monthly?

21 A. Yes.

22 Q. And so have you continued to pay those
23 amounts monthly?

24 A. Yes.

25 Q. So looking at that balance, April 14th

Page 150

1 A. Yes.

2 Q. Okay. If you paid all the payments,
3 you would think you would owe something less than
4 when the note was signed, and you're suggesting
5 that may be a mistake in the Caribou Title
6 records?

7 A. At one time they said there was a
8 mistake when the note was drawn up or something.
9 John -- I think you probably got the -- possibly
10 the information. John sent me some sort of a
11 letter that -- or the girls there said something.
12 To the best of my recollection, there was a --
13 somebody had made some sort of little mistake.

14 Q. Would the records that you maintain and
15 delivered to Mr. Hemmert for purposes of
16 preparing your tax returns, would they be
17 reflective of whatever payments you paid to DBL?

18 A. Yes, they should.

19 Q. Let's jump back to Exhibit 21, which is
20 your Individual Income Tax Return for 2004; and
21 Exhibit 22, which are your returns for 2000 --

22 A. How did you get these? Excuse me.

23 Q. Exhibit 21 is the 2004 return, and
24 Exhibit 22 is the 2007 return.

25 (Mr. Shaffer left the room.)

Page 152

1 A. Okay. I got 21 here.
2 Q. Okay. Exhibit 21 is your 2004 form
3 1040 U.S. Individual Income Tax Return; correct?
4 A. Yes.
5 Q. And that was one of those that would
6 have been prepared by Mr. Hemmert?
7 A. Right. From the --
8 Q. When you look to the signature page on
9 that return, it seems to show his signature and
10 his stamp of "Hemmert Accounting"?
11 A. Yes.
12 Q. Did you actually -- this was obtained
13 from Mr. Hemmert as his file copy, I believe.
14 Did you actually sign the original return that
15 was filed?
16 A. Yes.
17 Q. Would that -- the same have been for
18 Exhibit 22, the 2007 return, that would have been
19 prepared by Mr. Hemmert and signed by you?
20 A. If it was prepared, and that's what it
21 says, I did.
22 Q. I think you answered this generally
23 previously. But with respect to these specific
24 returns, would they have been prepared by Mr.
25 Hemmert based upon all of the records of your

Page 153

1 farming and ranch operation that you would have
2 delivered to him for that purpose?
3 A. I believe best of my knowledge, yes.
4 Q. And do you know whether or not the
5 interest paid on the DBL loan was reflected as an
6 expense deduction on these returns?
7 A. I don't know.
8 Q. In looking at Exhibit 21, the 2004
9 return, on the first page, line 22, it shows a
10 loss for that year of 20,753. Do you see that?
11 A. Mm-hmm.
12 Q. Now, I'd like you to turn in 2 -- turn
13 in three pages where it shows what's called
14 "Schedule F, Profit or Loss From Farming."
15 Do you have that in front of you?
16 A. Yes.
17 Q. Jerry, if you would, look down under
18 line 4, that says, "Sales of livestock, produce,
19 grains, and other products you raised," and it
20 shows 169,760. Would that have been the year,
21 then, that you sold out all of your livestock?
22 A. I don't know.
23 Q. Well, previously you told me you
24 thought it was around, I think you said 2003 or
25 2004?

Page 154

1 A. I don't know what the ...
2 Q. So that could have been grain and other
3 sales besides livestock?
4 A. I don't know.
5 Q. On line 6a, and line 5a, it talks about
6 some other payments. 6a is some ag program
7 payments of 25,063. What ag programs were you
8 involved in?
9 A. I don't know exactly what that is.
10 Q. Line 16 that lists depreciation,
11 there's \$26,428 shown in depreciation. Do you
12 see that number?
13 A. I see that number.
14 Q. And if you look over to the list of
15 property where that comes from, which is on the
16 next page back as part of the depreciation
17 schedule, you'll see on page 2 most of that comes
18 from cows and yearlings, over 20,000, No. 26?
19 A. I don't know.
20 Q. So you apparently --
21 A. I don't know how he does it. You're
22 asking the wrong person for this kind of
23 information.
24 Q. So basically these are questions we
25 should best direct to Mr. Hemmert?

Page 155

1 A. I suspect.
2 Q. You gave him the records, and he put it
3 together?
4 A. Yeah, he puts it together.
5 Q. If you look at the -- further back on
6 that return, there's several pages that seem to
7 itemize your deposits and expenditures that are
8 called QuickReport. It says "Jerry Beus Farms -
9 Checking." So this appears to be taken from your
10 farm checking account. Do you have a bookkeeper
11 that you use to maintain this QuickReport?
12 A. No. Well, I had a gal that come in and
13 took everything out of my checkbook and put it
14 onto the computer, and then print -- printed it
15 out on these sheets, and I took them to Max.
16 Q. Okay. So this wouldn't have been
17 prepared by Mr. Hemmert?
18 A. No.
19 Q. It would have been prepared by your
20 bookkeeper?
21 A. Yeah.
22 Q. And who's your bookkeeper?
23 A. Not a bookkeeper. It was a gal that
24 just come out and transferred it from my
25 checkbook to the computer. And then I took it

Page 156

1 from -- the printout on the computer to Max.
2 Q. Okay. And where was your checking
3 account at?
4 A. At that time?
5 Q. Yes.
6 A. It might have been at U.S. Bank.
7 Q. And then did you run all the farm
8 income expenses through that account?
9 A. Yes.
10 Q. So then whatever you had in your
11 checkbook would get put on this ledger, and it
12 went to Mr. Hemmert --
13 A. Yes.
14 Q. -- and he prepared the returns?
15 A. Yes. All the deposits and debits.
16 Q. And in this 2004 QuickBook Report, page
17 1, it shows three payments to Beth Beus, and that
18 would have reflected whatever checks you wrote to
19 her that year?
20 A. That appears to be.
21 Q. Then you had a check December 30th,
22 '04, to Pauline Stoddard, and I think you
23 indicated earlier that would have been the person
24 that you were leasing the property from up by
25 Georgetown?

Page 157

1 A. Yes.
2 Q. What was your annual rent to her?
3 Would it have been 4,000?
4 A. No. It was 6,000, and then she paid
5 some expenses.
6 Q. Okay.
7 A. She paid a couple thousand dollars
8 worth of expenses, spray and chemical.
9 Q. I think you said earlier you were
10 current on the lease payments to her. Would they
11 have been paid in a different year?
12 A. Oh, what year are we in?
13 Q. Well, we're in 2004. You said the rent
14 to her was 6,000 a year, and I just see a check
15 to her for 4,000 in 2004.
16 A. I don't know.
17 Q. Don't remember, okay.
18 Let's look back to the next return for
19 2007. And it showed you an operating loss of --
20 on line 22 of page 1 of \$73 for the year 2004;
21 correct?
22 A. 2000-what?
23 Q. 2007. Excuse me.
24 MR. SMITH: Right there.
25 Q. (BY MR. BUDGE) Would that be correct,

Page 158

1 Jerry?
2 A. Pardon?
3 Q. Would that be correct?
4 A. \$73. That's what it says, yes.
5 Q. And then -- I won't go into the
6 details; we can talk to Mr. Hemmert about that --
7 but at the end of that return, it shows -- has
8 another QuickReport. It says for "Jerry Beus
9 Farms - Checking." Would that have been handled
10 the same in 2007, that whatever you had in your
11 checkbook got put onto QuickBook Report, and then
12 you printed the report and delivered it to Mr.
13 Hemmert to prepare the return?
14 A. Yeah. Yes, I believe that would be the
15 way it's taken care of.
16 Q. I'd like you to look at that list of
17 checks there -- they're not really all that
18 long -- and take just a moment, if you would --
19 A. What page are we at here?
20 Q. It's at the end of your 2007 return,
21 Exhibit 22.
22 A. I got an Ireland Bank here.
23 Q. Back farther.
24 A. I don't --
25 MR. SMITH: Right here.

Page 159

1 THE WITNESS: Okay.
2 Q. (BY MR. BUDGE) What I'd like to do,
3 Jerry -- we'll take a five-minute break to give
4 you a chance to examine that -- I'd like you to
5 go through that, if you would, and I'll provide
6 you a highlighter and -- so we can find it easy
7 -- I'd like you to mark any of those expenditures
8 in 2007 that you contend are improvements that
9 the trust is supposed to reimburse you for.

And I'm referring back to our
discussion earlier regarding the 2007 lease is
the first one that had some language in it that
indicated the trust was to reimburse you for
improvements. And so this would have been the
first tax return after that lease was in place.
So if you would just go through that list, while
we're taking a break, and identify any
expenditure there that you contend would be an
improvement for which you think the trust is
supposed to reimburse you.

A. Okay.

(Mr. Shaffer entered the room.)

(A recess was held.)

Q. (BY MR. BUDGE) Okay. Jerry, during
the break you were looking at Exhibit 22, the

Page 160

40 (Pages 157 to 160)

1 2007 tax returns, and specifically the
2 QuickReport records from your checking account,
3 to see if you were able to identify any
4 expenditures that you considered were
5 improvements. And were you able to identify
6 anything there?

7 A. Well, I'll have to -- I'll look at my
8 checks and see what I wrote on the memo on them.

9 Q. So from a review of the QuickBook
10 Report, you couldn't identify anything. But
11 subject to check, and that you may want to go
12 back --

13 A. She don't have the memo --

14 Q. Just a minute. You couldn't identify
15 anything from the QuickBook Report, but you may
16 be able to once you look at your checkbook
17 register?

18 A. Yes. Possibly, yes.

19 Q. Okay. And so will you do that, and
20 then come back and advise us by identifying on
21 this particular exhibit, which we can highlight
22 in yellow, the ones that you claim are
23 improvements?

24 A. Yes.

25 Q. Will you also bring your records

Page 161

1 pertained to that which would be the checkbook
2 that you're looking at, any bills or receipts or
3 contracts that led you to the conclusion that
4 that would be an expense?

5 A. Yeah.

6 Q. Thank you.

7 Had Mr. Souza ever provided you with an
8 accounting of his work as trustee of the trust?

9 A. Not really. He hadn't provided me. I
10 think he provided Beth.

11 Q. Did he ever provide you with a copy of
12 the trust tax returns?

13 A. Not to my knowledge, I don't think. I
14 don't recall.

15 Q. Do you know if Mr. Souza ever filed
16 trust tax returns?

17 A. I really don't know.

18 Q. Okay. Let's look at Exhibit 16, which
19 is a copy of the appraisal report dated
20 November 21st, 2008, by Robert R. Fellows.

21 A. We're going back now to 15?

22 Q. Sixteen.

23 A. Sixteen.

24 Q. You made some comments earlier that you
25 had issues with that appraisal report. Were you

Page 162

1 aware, Jerry, that our office made arrangements
2 for this appraisal to be done by Mr. Fellows?

3 A. I -- I think that's when you took over
4 as trustee, isn't it?

5 Q. No, I've never been trustee. I think
6 -- is not John Souza the trustee?

7 A. That's who I thought was.

8 Q. Yeah. Now, were you aware that from
9 your discussions with Mr. Nelson that an
10 appraisal was going to be ordered?

11 A. Yes, I was.

12 Q. And were you aware that Mr. Nelson,
13 acting as your attorney, suggested and agreed to
14 the use of Robert Fellows as the appraiser? Did
15 you know there was collaboration between us to
16 get him as the appraiser?

17 A. No. I thought Lisa Ayers set all that
18 up.

19 Q. When did you talk to Lisa Ayers about
20 this appraisal that was done in November of 2008?

21 A. Well, she was one that brought them
22 guys out to show them that she was showing the
23 ranch.

24 Q. In November of 2008?

25 A. December.

Page 163

1 Q. So you didn't have -- Mr. Nelson didn't
2 tell you that we -- that he had arranged with our
3 office to have a joint appraisal, a cost of which
4 would be shared by you and Doug and Dallas?

5 A. Yeah, he did. There was appraisal
6 done, and it was supposed to be shared by the
7 three of us; yes, he did.

8 Q. In looking at that report, if you could
9 turn in, please, to page 5. It's entitled
10 "Summary of Appraisal Facts and Conclusions."

11 Down in the middle, it has appraisal with a
12 request of, and that was Mr. Shaffer of our
13 office had contacted Mr. Fellows after first
14 talking with Mr. Nelson and actually made the
15 arrangements. So we did make arrangements; you
16 were aware of that?

17 A. I guess, yeah.

18 Q. And then the authorization reflected
19 there shows "Mr. Jerry Beus." So were you aware
20 that Clyde Nelson, as your attorney, was telling
21 Mr. Fellows, yes, we authorize the appraisal?

22 A. What -- repeat -- say that again,
23 please.

24 Q. Well, on page 5 of Mr. Fellows'
25 appraisal, he is showing there that it was

Page 164

1 requested by our office, but --
2 A. And it says --
3 Q. -- it was authorized by "Mr. Jerry
4 Beus."
5 A. I never did authorize it.
6 Q. But were you aware that Clyde Nelson,
7 your attorney, had authorized the appraisal on
8 your behalf by --
9 A. No, I wasn't.
10 Q. -- Mr. Fellows?
11 A. No.
12 Q. You were not aware?
13 A. No.
14 Q. You said a moment you were aware that
15 the cost was to be shared?
16 A. Yes.
17 Q. And how did that come to your
18 attention?
19 A. He -- he told me I -- that was after
20 the appraisal, that I owed a third of it.
21 Q. Okay. And you refused to pay that?
22 A. Yes.
23 Q. Okay. And if I understand your
24 testimony earlier today, it was because you
25 didn't like how the appraisal classified some of

Page 165

1 the land between --
2 A. It was -- it was clear off the wall.
3 Q. Okay. Identify what it is in the
4 appraisal that you claim is off the wall. Is it
5 what you told me earlier today, the
6 classification of land or is it something else?
7 A. Oh, there's several different things.
8 Q. So let's go ahead and identify those
9 for me.
10 A. Okay. Right here where it has water,
11 it says "836 acres."
12 MR. SMITH: Identify the page.
13 Q. (BY MR. BUDGE) Page 10?
14 A. Page 10.
15 Q. Okay. Explain that. He states here
16 that according to you that we have water rights
17 for 838 [sic] acres of ag land. So is that what
18 you disagree --
19 A. It was wrong. It was wrong.
20 Q. You're contending that the acreage --
21 irrigated acreage should be different than that?
22 A. Yes. In fact, isn't there some
23 correspondence to you stating that?
24 Q. Correct. So just the acreage was too
25 high. I think you said earlier it should have

Page 166

1 750 irrigated acres?
2 A. Yup.
3 Q. Okay. What else?
4 A. Okay. Can you add and subtract pretty
5 well?
6 Q. With a calculator.
7 A. Okay. 836.67 plus 671.131. That adds
8 up to what?
9 MR. SMITH: Say that again.
10 THE WITNESS: Fourteen-hundred and some
11 tillable acres, 1500 tillable acres -- and
12 there's only 1250 tillable acres. Yes, I object
13 to that.
14 Q. (BY MR. BUDGE) So is there anything
15 other than that? We kind of --
16 A. Yes.
17 Q. -- covered most of that this morning
18 that you didn't think the acreage was right?
19 A. Yes. Where is it? A couple of other
20 things here. He's comparing irrigated ground
21 with pivots down in potato country on these
22 comparisons sales.
23 Q. Do you believe that the estimated value
24 of 2.9 million is too high or --
25 A. Yes.

Page 167

1 Q. -- too low?
2 A. Way too high.
3 Q. And are you aware that the listing was
4 based upon that figure?
5 A. Yes.
6 Q. So is it your belief that the property
7 should be sold for something less than that?
8 A. Yes.
9 Q. And what price would you find
10 acceptable for purchase of sale?
11 A. I haven't -- I've got another
12 appraisal. It should be finished in 2 or three
13 days.
14 Q. What was the purpose of you getting
15 another appraisal?
16 A. Because this one was false.
17 Q. If it comes up with a different amount,
18 what do you propose to do with that?
19 A. Turn it over to the trustee, and, I
20 guess, the court when we get in litigation.
21 Q. From what -- what do you want to
22 happen? Just reduce the sale price to a lower
23 amount if --
24 A. Yes.
25 Q. -- it comes in lower?

Page 168

1 A. Yeah.
2 Q. Okay. And who's doing the other
3 appraisal?
4 A. Brent Maughan.
5 THE COURT REPORTER: "Brent"?
6 THE WITNESS: Brent Maughan,
7 M-a-u-g-h-a-n.
8 Q. (BY MR. BUDGE) And when do you expect
9 it to be completed?
10 A. I talked to him this morning, and he
11 said 2 to three days he'd have it.
12 Q. And will you provide a copy of that?
13 A. Yes.
14 Q. So once we get that and can compare the
15 2 --
16 A. Will you pay for --
17 MR. SMITH: Hey, just -- just answer
18 the question.
19 Q. And if you have some questions for me,
20 Jerry, you can take them through Steve Smith, and
21 we'll handle them that way. We can handle them
22 off the record -- I'm happy to do that with you
23 -- but not during a deposition.
24 A. Okay.
25 Q. So once that's available, we can look

Page 169

1 at it. But your objective would be to say that
2 let's reduce the listing price to something less
3 than what we have?
4 A. Yeah. Let's reduce it to a -- get it
5 to a real appraisal.
6 Q. Are you aware that Doug and Dallas went
7 ahead and paid Mr. Fellows for your third after
8 Mr. Fellows was upset he didn't get paid?
9 A. No, I'm not aware.
10 Q. Let's look at Exhibit 20. This is the
11 listing agreement by Mr. Souza as trustee that's
12 been signed that reflects the property's for sale
13 at the 2,901,550 appraise price. If this listing
14 is at a price higher than we think the property
15 is worth, do you have any problem with this
16 particular listing agreement at this price?
17 A. Yes.
18 Q. What's your problem with the listing --
19 A. I think it's too high.
20 Q. Okay. Other than the price?
21 A. Who -- who's listing it?
22 Q. It's signed by the trustee.
23 A. Agent Lisa Ayers. Yes, I got a problem
24 with that. She's a relative, and she needs not
25 be involved in this at all.

Page 170

1 Q. A relative of yours?
2 A. Right.
3 Q. Did you -- didn't you have an
4 opportunity to review the proposed listing before
5 Mr. Souza signed it?
6 A. Not -- no. At that time --
7 Q. Did your attorney?
8 A. -- Clyde and I was splitting deals, and
9 I didn't have a --
10 Q. So if Mr. Souza were to testify that he
11 had reviewed --
12 A. I would have --
13 Q. Just a moment, Jerry.
14 If Mr. Souza were to testify that he
15 had discussed the listing agreement with you or
16 with your attorney, Mr. Smith, before he signed,
17 it would you dispute that?
18 A. Yes, I definitely would. Lisa Ayers
19 don't have any -- any business being involved in
20 this.
21 Q. And let me guess a little. The reason
22 that you don't like a higher listing price is
23 because if a buyer came along at a higher price,
24 then you would have to meet that as a part of
25 your first option? Is that your concern?

Page 171

1 A. Are you guessing?
2 Q. No, I'm asking you. It seems unusual
3 that a seller doesn't want to get the highest
4 price you can. You seem to be saying: I need a
5 lower appraisal. Explain to me why you would
6 think you would prefer to have a lower appraisal?
7 A. Because that's what it's worth.
8 Q. Is it to speed up the sale, or would it
9 be to reduce the price that you might have to pay
10 if a buyer came along?
11 A. To speed up the sale, yeah.
12 Q. That's your main motivation?
13 A. Well, I've got the last option. And
14 they want their money as fast as they can get it.
15 And I think it needs to be reasonable, and that
16 would speed up . . .
17 Q. Let me just ask you some general
18 questions about your farm and ranch operations,
19 Jerry. Up until the time that you sold your
20 livestock off, whenever that was, was your
21 operation basically beef cattle and sheep and
22 then crops?
23 A. Yes.
24 Q. And did you use the hay to feed your
25 livestock?

Page 172

43 (Pages 169 to 172)

1 A. Yes.
2 Q. Did you typically sell hay off of the
3 property?
4 A. No.
5 Q. And then as far as the grain, did you
6 typically harvest and sell the grain?
7 A. Yes.
8 Q. And with respect to your livestock
9 operation, did you generally maintain a certain
10 herd size, and then relied upon the sale of the
11 calves and the lambs as a source of income?
12 A. Yes.
13 Q. And what was the approximate size of
14 your cattle operation and your sheep operation?
15 A. I had around 1,000 head of ewes and 100
16 head of cattle.
17 Q. And your cattle operation was basically
18 what's commonly known as a cow-calf operation?
19 A. Yes.
20 Q. And I think the similar term for the
21 sheep operation would be a lamb operation?
22 A. Right.
23 Q. So you would attempt to maintain that
24 basic herd size year-in year-out?
25 A. Yes.

Page 173

1 Q. What caused you to sell off all the
2 livestock, whenever it was, before you --
3 A. The bankers were calling in the loans,
4 and I sold them off to make the payments.
5 Q. So did the proceeds of those livestock
6 sales go on those notes that were signed in
7 2002 --
8 A. Yeah.
9 Q. -- to Ireland?
10 All of it?
11 A. It went to Ireland Bank.
12 Q. And did they have a security interest
13 or mortgage in that livestock?
14 A. Yes, I'm sure they did.
15 Q. So the decision to sell off your
16 livestock was prompted primarily by the bank
17 saying: We want to be paid, sell off the
18 collateral, or we'll do it for you?
19 A. Yeah. Yeah, basically.
20 Q. Okay. In addition to the real property
21 that you leased from the trust and that that you
22 leased from Pauline Stoddard, is there any other
23 land that you have leased from other owners?
24 A. No.
25 Q. And do you own any land --

Page 174

1 A. Oh.
2 Q. Excuse me.
3 A. Years ago, I leased 2,000 acres out by
4 the Blackfoot Reservoir from Tom McKellen.
5 Q. You say "years ago." Would have
6 been --
7 A. In the '80s.
8 Q. In the '80s.
9 And is there any land that you own that
10 you operate as a part of the lease property?
11 A. No.
12 Q. How many acres are involved in the
13 Stoddard lease?
14 A. Right close to 600 acres.
15 Q. And how long have you had that Stoddard
16 lease?
17 A. I think it's four years, three years.
18 Q. I think you said before the rent on
19 that was 6,000 a year cash?
20 A. Yeah, and she pays part of the expense.
21 Q. We've talked about some map work today.
22 Do you have some other maps that reflect your
23 property?
24 A. Yeah, I believe I do. If not, the FSA
25 does.

Page 175

1 Q. So that's what you'll secure to try to
2 deal with this water issue?
3 A. (The witness nods.)
4 Q. Do you participate in the FSA farm
5 programs?
6 A. Yes.
7 Q. And --
8 A. I try.
9 Q. -- how about any of the CRP programs,
10 Conservation Reserve Programs?
11 A. No. Like --
12 Q. CRP?
13 A. Hmm-hmm.
14 Q. Do you have a set amount you receive
15 annually from the FSA programs?
16 A. A what?
17 Q. Do you have a set amount that you get
18 every year from FSA?
19 A. Yeah. It's -- they just changed it 2
20 years ago and give us a set amount, and I'm not
21 sure just what it is. I think it's around \$8,000
22 or something.
23 Q. On your 2007 return --
24 A. Where are we at? Twenty-one or --
25 Q. Exhibit 22. There's an amount shown as

Page 176

44 (Pages 173 to 176)

1	\$20,000. It's on your Schedule F --	1	signed it was May 28th of '74.
2	A. That could have been --	2	Would that have been before you began
3	Q. -- line 7.	3	leasing the property from your dad?
4	A. I think he just lumps all them in	4	A. About that time, I suspect.
5	together, and I suspect that was a disaster	5	Q. And if you'll note, there are three
6	payment.	6	letters from various individuals attached to that
7	Q. That may include some besides the FSA	7	that seem to be written to support this
8	payment?	8	particular claim that water had been used as
9	A. Yeah, besides the -- it might have been	9	claimed since the early 1900s. Do you know any
10	he lumps all that in somehow. I don't know how	10	of those individuals?
11	he does it.	11	A. Who are they?
12	Q. Then on your 2004 return, which is our	12	Q. One seems to be -- you'll have to look
13	Exhibit 21, line 6a, it showed agricultural	13	at the name -- it seems to be a T. E. Thompson.
14	program payments of 25,063.	14	Is that Tommy Thompson? And the next one is
15	A. I'm sure that that was mostly disaster	15	signed by J. O. Wallace, which I believe is John
16	payment. In fact, there was no set payment then.	16	O. Wallace. And the third one is Fayette --
17	Q. Would that be the approximate amount	17	A. Well, that's Weaver, isn't it? Rex
18	that you would get year-in year-out --	18	Weaver?
19	A. No.	19	Q. Do you know any of these individuals?
20	Q. -- up until they fixed it?	20	A. Fayette Sizemore. Yeah, I know them.
21	A. No. You didn't get a set amount. It	21	I don't know this -- this -- I don't think is
22	depended if the price -- see, they just changed	22	Thompson, but whatever it is, I --
23	this farm program a year ago. It was set up	23	Q. As I look at this claim that your dad
24	before if the price of grain dropped below a	24	filed and remains of the water sources records,
25	certain level, then it kicked in a payment. And	25	he's claiming that he uses water from Slug Creek
	Page 177		Page 179
1	then if you -- if they declared the county a	1	tributary of the Blackfoot River -- excuse me,
2	disaster, then they paid a disaster payment,	2	I'm sorry -- from Wood Canyon Creek to irrigate
3	which is -- is usually not a whole lot, but it	3	127 acres, and also for stock watering of a
4	helped.	4	thousand sheep.
5	Q. Do you have an estimate --	5	A. They claim about anything, but they
6	A. You don't know from year to year what	6	can't make water run uphill in a ditch. Not even
7	you get from them.	7	if they're LDS.
8	Q. I understand.	8	Q. Let's go back and let me answer -- ask
9	A. You try to get in the best you can.	9	the questions --
10	Q. Do you have an expectation of what your	10	A. Okay.
11	payments will be this year?	11	Q. -- and we can have a discussion of
12	A. I would -- that could -- that could	12	that.
13	vary if the price drops. It could go to	13	A. They claim all the acres they can get.
14	\$100,000.	14	And you said that yourself, Randy.
15	Q. Do you know what you received in 2008?	15	Q. I'm just asking you, Jerry.
16	A. I don't think there was any payments at	16	A. Yeah.
17	all in 2008, any -- any --	17	Q. You were there on your dad's place?
18	Q. Whatever it is, might be on your return	18	A. I know.
19	in the record?	19	Q. And your dad's filed a claim saying: I
20	A. Yeah. Yeah.	20	own some water in Wood Canyon Creek.
21	Q. Let's see if we can sort out this water	21	A. Mm-hmm.
22	right issue. Let's turn to Exhibit 17. Exhibit	22	Q. And he's claiming that he's used it a
23	17 is a Claim 11-4039. It appears that your	23	long time, and he's got some letters from people
24	father, Lynn G. Bruce, filed with the Idaho	24	who presumably knew about it that are saying it's
25	Department of Water Resources. And the date he	25	are been used for a long time. Do you have any
	Page 178		Page 180

1 reason to question that -- the fact that there
2 has been use by your father and his predecessors
3 from Wood Canyon Creek in the way he described in
4 this claim?

5 A. Yes, mm-hmm.

6 Q. You question that?

7 A. Yes.

8 Q. So your dad's signature says that
9 according -- if you look above his signature --
10 it says, "Be it known that the undersigned, being
11 duly sworn, deposes and says that he having
12 subscribed to the foregoing water right, together
13 with the attached information, and that the facts
14 matters and facts therein are true to the best of
15 affiant's knowledge." So your dad signed this
16 before a notary public saying these facts are
17 true.

18 Are you saying today, Jerry, that your
19 father was not being truthful --

20 A. That's what I'm saying.

21 Q. -- when he filed this claim?

22 What do you --

23 A. On this certain document, that's what
24 I'm saying.

25 Q. What do you base the belief on that

Page 181

1 your dad was lying when he filed this claim?

2 A. As you said before, everybody that
3 claims water rights does it. I'm sure you're
4 aware of that. And --

5 Q. Does what?

6 A. They --

7 Q. Everybody's dishonest?

8 A. They claim -- excuse me, go ahead.

9 MR. SMITH: The question is: What part
10 of this isn't correct?

11 THE WITNESS: The acreage.

12 Q. (BY MR. BUDGE) The irrigated acres?

13 A. Yeah. You can't make water run uphill
14 in the ditch.

15 Q. Well, if you look at page 2, Jerry,
16 your dad apparently drew a map to show where
17 water appears to be running down the ditch from
18 Wood Canyon, and he's showing where he's
19 irrigating with it.

20 A. Can you make heads or tails out of
21 that? I can't.

22 Q. Do you have reason to doubt that your
23 dad was using water from Wood Canyon Creek to
24 irrigate those acres he shows on the map?

25 A. Yes.

Page 182

1 Q. What's the basis of your doubt?

2 A. Well, I -- he didn't do any irrigating
3 to speak of in them days. Hopkins and Christman
4 sure didn't. And I didn't the first three years
5 when I run it.

6 Q. Well, that claim was in '74 and about
7 nine years before he signed his will in '83. And
8 in his will, he discusses -- give me just a
9 moment here -- let's go off the record for a
10 minute.

(A discussion was held off the record.)

11 Q. (BY MR. BUDGE) Let's just continue on.

12 So your dad was claiming irrigation,
13 and you're saying he didn't really irrigate then?

14 A. Yes.

15 Q. So you're saying all the land was dry
16 farm?

17 A. The first three years I run it, it was;
18 and the previous 2, three years before that.

19 Q. Then we have these three witnesses that
20 say also that the water had been used by the Beus
21 family since the 1900s. So you think they're in
22 error too?

23 A. I don't know what they are.

24 Q. Okay. Let's move a few pages farther

Page 183

1 back in Exhibit 17. Your dad filed what's called
2 an Application For Transfer. It appears that he
3 just changed part of the place of use. That was
4 a few years later, on June 10th of 1975. And he
5 filed this application for transfer that got
6 approved by Water Resources changing the place of
7 use. Do you have reason to dispute that that's
8 part of the water?

9 A. I don't really -- where are we at on
10 that?

11 Q. That's the Application For Transfer,
12 which is the next document following the claim.

13 A. Eighteen?

14 Q. Part of 17?

15 MR. SMITH: Right here.

16 THE WITNESS: Is that stock water? Oh,
17 and irrigation?

18 Q. (BY MR. BUDGE) This is the same water
19 right we've been talking about, stock water and
20 irrigation.

21 A. Okay.

22 Q. And if you look at -- again, your dad
23 provided a map, and showed where he was going to
24 use it, which is slightly different acres. And
25 then on the next page under paragraph 10C, he

Page 184

1 says his means of diversion is an "open ditch and
2 pipeline." And he states on E, "Due to erosion
3 purposes and utilize the water and to use gravity
4 feed instead of fuel for economy purposes."

5 A. Yeah, I see that.

6 Q. So do you have reason to doubt --

7 A. What's -- what date was that now?

8 Q. The date that your father signed, it
9 was March 3rd of '75.

10 A. Okay.

11 Q. So is there something about that change
12 that you also think is false or incorrect or
13 incomplete?

14 A. No, I think that's fine, right.

15 Q. So the claim he filed in May of '74 was
16 not fine, but the amendment to it a year later
17 June of '75 was fine?

18 A. That's what it appears.

19 Q. At least you look at the transfer in
20 '75 you look at that and you don't find anything
21 wrong with that?

22 A. No.

23 Q. Okay. Now, Exhibit 18, Jerry, is a map
24 that we discussed during the noon break. It was
25 obtained from Water Resources to show various

Page 185

1 water rights. And the places of use under each
2 of those rights are colored out on this map. And
3 my understanding is that you will secure a better
4 map from PSA?

5 A. I'll bring you a map, yeah.

6 Q. And you will attempt to identify on
7 that map the land that you currently irrigate so
8 we can see if there's a difference between the
9 number of irrigated acres on your water rights,
10 the number that was in the appraisal, and the
11 750 acres that you think you're irrigating?

12 A. Yeah, I'll -- I'll attempt to identify.

13 Q. I had a question on -- if you would
14 look to the third page of those maps, there's a
15 map pertaining to water right 27-02086. Do you
16 see that?

17 A. "27-"

18 MR. SMITH: You got it right in front
19 of you.

20 THE WITNESS: This one?

21 MR. SMITH: Yeah.

22 Q. (BY MR. BUDGE) And that's the water
23 right out by Agrium?

24 A. The Snake River.

25 Q. It's in the Snake River Basin

Page 186

1 Adjudication, correct?

2 A. Yup.

3 Q. And there's a claim pending that Mr.
4 Souza's handling; correct?

5 A. I -- I --

6 THE WITNESS: Steve, didn't you --

7 MR. SMITH: I appeared in that because
8 I'm not sure it would be correct to say he's
9 handling it; "mishandling" might be a better
10 word, but ...

11 Q. (BY MR. BUDGE) Okay. My question:
12 Mr. Souza did some work on that which gave rise
13 to the bill that he sent you that you testified
14 to earlier?

15 A. Yes, they sent me a letter saying that
16 we was going to lose these water rights, and I
17 took it to him.

18 Q. And as I understand it, a claim was
19 made by Mr. Souza for this particular water right
20 out by Agrium; correct?

21 A. Mm-hmm.

22 Q. And the Department of Water Resources
23 recommended it be disallowed because they
24 couldn't find evidence that it's been being used?

25 A. Yeah, it says "active" right here.

Page 187

1 Q. The claim is active, but it was
2 recommended disallowed.

3 A. Okay.

4 Q. That's the proceeding Mr. Souza is
5 representing on it. All I'm trying to
6 understand, Jerry, is -- because your brothers
7 have the same interest you do in keeping that
8 right alive, if it's possible.

9 Are you aware that the court has issued
10 an order that Mr. Souza is to show cause in
11 September why he shouldn't be held in contempt
12 for not appearing at the last status and
13 scheduling conference?

14 A. I'm not aware of that.

15 Q. You're not aware of it?

16 A. I think the reason he didn't --

17 Q. Well --

18 A. -- appear --

19 Q. So what I'd like to get at, Jerry, is,
20 can you tell me anything about --

21 A. I -- I can't tell you.

22 Q. -- the history of that water right?

23 MR. SMITH: Jerry, wait until he asks
24 his question, and then you answer. Okay?

25 Q. (BY MR. BUDGE) Do you know anything

Page 188

1 about the use of that water right?
2 A. A little bit.
3 Q. Okay. Tell me what you know. Has it
4 been -- is it water there that's been diverted
5 and applied to beneficial use?
6 A. I have not used it.
7 Q. You have not?
8 A. No.
9 Q. Do you recall when you were growing up
10 whether your dad was using that water?
11 A. Yes, he -- he used it in the '60s.
12 Q. And then what happened, or when did he
13 discontinue use?
14 A. When -- would have been El Paso gas and
15 filter fertilizer plant and made a big gyp pond
16 there and covered up the -- there was no
17 right-of-way ditch or stuff. We couldn't get the
18 water by there.
19 Q. Okay. What was the source of that
20 water? Do you remember?
21 A. Toolie Springs and Woodall Lake.
22 THE COURT REPORTER: "Woodall"?
23 THE WITNESS: Woodall.
24 MR. SMITH: 2 what Springs?
25 THE WITNESS: Toolie Springs.

Page 189

1 Q. (BY MR. BUDGE) Is that T-u-l-l --
2 A. T-o-o-l -- I believe it's right here.
3 MR. DOUG BEUS: T-o-l-l-e.
4 THE WITNESS: Yeah, T-o-l-l-i-e, I
5 think, and Woodall.
6 Q. (BY MR. BUDGE) Okay. So at one time
7 you have some memory that your dad had some water
8 that he irrigated with. Do you know what -- how
9 many acres or what crops he was raising?
10 A. No, I don't. I remember coming in on
11 the back side of the 80, is all I remember.
12 Q. Okay. So when -- the El Paso --
13 A. I was probably 14 or something like
14 that.
15 Q. Okay. So was El Paso the predecessor
16 to Agrium?
17 A. El Paso Gas was the predecessor to --
18 Q. Becker?
19 A. -- APC. And then AGPC was the
20 predecessor to Becker, and then Becker was the
21 predecessor to Agrium.
22 Q. Where the Agrium plant is now?
23 A. Nu-West. And then Nu-West was the
24 predecessor to Agrium.
25 Q. I'm just trying to identify, Agrium is

Page 190

1 the fertilizer manufacturer that's there now?
2 A. Right.
3 Q. And it was their predecessor, when they
4 built the operation, covered up an irrigation
5 ditch?
6 A. Yeah. And now -- and since then, this
7 last year or 2, I think they've covered up the
8 springs and everything.
9 Q. Okay. So as far as you know, that
10 happened in the '60s, and have been no use since
11 then?
12 A. Yeah.
13 Q. Do you know if your dad took any action
14 to --
15 A. I think --
16 Q. -- restore the ditch or get the water
17 down --
18 A. Well, he couldn't because they put this
19 great big pond there. He'd have to go around and
20 run the -- again uphill in the ditch in order to
21 go around it. And that's -- you just can't
22 water --
23 Q. But you wouldn't know of any evidence
24 that we could find anywhere to demonstrate that
25 water from those sources got diverted and applied

Page 191

1 to beneficial use to raise some crop since the
2 1960s when this ditch got covered?
3 A. The only thing I can think of was --
4 would be the Salmon. I think he had an agreement
5 with the Salmon down country. No, I don't -- I
6 don't know of any.
7 Q. Jerry, when we talk in water right
8 terms, do you know what I'm talking about if I
9 talk about expanding acres beyond what is allowed
10 to be used under a water right?
11 A. I just -- just know that you said I was
12 breaking the law.
13 Q. Well, let me describe it. You have a
14 water right that allows a certain number of acres
15 to be irrigated, and if it's expanded to
16 additional acres, that's what I'm referring to on
17 expanded acres.
18 A. Yeah, I -- I think the water probably
19 only covers 440 acres.
20 Q. So since you took over operation from
21 the trust, did you make some changes in the
22 irrigation system that enabled more acres to be
23 irrigated while you were operating?
24 A. Yes.
25 Q. Okay. Explain how many acres were

Page 192

1 under irrigation when you were first leasing from
2 the trust, approximately?

3 A. Well, the best I can recall, probably
4 400-some.

5 Q. And then at some time in the future you
6 made some changes to the irrigation system to
7 expand that?

8 A. Yes.

9 Q. So the 400 acres would have been
10 there --

11 A. From 1975 to --

12 Q. -- sometime back of the time of the '86
13 lease? That was your first lease from the trust?

14 A. It would have been -- yeah. Yeah.

15 Q. Okay. And then you did some things to
16 change the irrigation system that allowed you to
17 irrigate --

18 A. Yeah.

19 Q. -- more land?

20 A. Yeah. I broke the law.

21 Q. Okay. And tell me what you did. Did
22 you convert to sprinklers, to wheel lines, or
23 center pivots? Tell me about that.

24 A. I buried main line and expanded acreage
25 with sprinkler pipe.

Page 193

1 Q. Let's get at it this way: The
2 400 acres that you were irrigating when you
3 started the lease in '86, how did you irrigate?
4 Was it flood or sprinkler or some combination?

5 A. It was -- it was -- I think most of
6 that was probably -- I think was probably
7 sprinklers.

8 Q. And that would have been --

9 A. I can't recall.

10 Q. -- hand line?

11 A. Yeah.

12 Q. Okay. Not much, if any, flood
13 irrigation?

14 A. There may have some down below the
15 pond. I can't remember for sure.

16 Q. So little or no flood.

17 And then what did you do to -- did you
18 buy more sprinklers? Did you change the type of
19 sprinklers? How did you expand to irrigate more
20 acres from the sprinkler irrigation that was
21 there in '86?

22 A. How did I expand?

23 Q. How did you get the water beyond
24 400 acres to cover more acres?

25 A. I buried main line.

Page 194

1 Q. And did you have more sprinklers --

2 A. Expanded --

3 Q. Systems, more wheel lines, or more hand
4 lines?

5 A. Well, yeah, I brought more hand lines
6 and wheel lines, yes.

7 Q. And when was that purchase and
8 expansion made?

9 A. I can't -- I can't recall right off.

10 Q. When did you put the buried main line
11 in?

12 A. It was in the '80s.

13 Q. Okay. So the '80s --

14 A. '90.

15 Q. -- or early '90s --

16 A. '90s, yes.

17 Q. -- you put a main line in, moved water
18 farther, and you bought some more hand lines?

19 A. Yeah.

20 Q. And brought more land under irrigation?

21 A. Mm-hmm.

22 Q. And is that when you went from the 400
23 up to the 750 that you claim was irrigated now?

24 A. Yes.

25 Q. Okay. And it's these hand lines are

Page 195

1 some of the equipment that you claim that you
2 own. So if the ranch is sold, you would get the
3 money from those, or you could take them off the
4 property 'cause you paid for them?

5 A. Yeah.

6 Q. Okay. Any other expansions beside what
7 we've just discussed?

8 A. Not really as far as -- expansions like
9 how? I put the -- put a pump in down below the
10 pond and went to the -- the -- up into the hollow
11 and --

12 Q. Have you submitted any claims for crop
13 losses to an insurance company?

14 A. Yes.

15 Q. What claims have you submitted, and
16 what years?

17 A. Malt barley, and I don't know what year
18 it was.

19 Q. A loss due to what? Freezing? Hail,
20 or --

21 A. Drought and grasshoppers. I think it
22 was '99, '98, something like that.

23 Q. Is that the only one you can recall?

24 A. Yup. Oh, years ago, I think I had some
25 winter kill on some fall wheat, and they turned

Page 196

49 (Pages 193 to 196)

1 it down. And I give it to Clyde Nelson. It was
2 only a thousand dollars. He said if we wanted to
3 fight it, we had to go clear to back east to
4 fight it, so -

5 Q. Do you -

6 A. -- I didn't pursue it.

7 Q. Do you carry crop loss insurance now?

8 A. Do I now?

9 Q. Yes.

10 A. No.

11 Q. How long has it been since you had crop
12 insurance?

13 A. I don't know, four or five years. I do
14 now. They got an acre program that the
15 government just come out with, and I got it on
16 the -- the Pauline's place. They paid for it.

17 MR. BUDGE: Let's go off the record for
18 just a minute.

19 (A recess was held.)

20 MR. SMITH: We'll read and sign.

21 (Deposition concluded at 3:51 p.m.)

22 (Signature requested.)
23
24
25

Page 197

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BANNOCK

DALLAS BEUS, individually;)

DOUG BEUS, individually,)

Plaintiffs,)

vs.

)Case No. CV-09-1822-OC

JOHN C. SOUZA, Trustee of)

the Lynn G. Beus Trust;)

JERRY BEUS, individually,)

Defendants.)

_____)

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DEPOSITION OF JOHN SOUZA

AUGUST 14, 2009

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL
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IN AND FOR THE COUNTY OF BANNOCK

DALLAS BEUS, individually;)
DOUG BEUS, individually,)
Plaintiffs,)
vs.) Case No. CV-09-1822-OC
JOHN C. SOUZA, Trustee of)
the Lynn G. Beus Trust;)
JERRY BEUS, individually,)
Defendants.)

DEPOSITION OF JOHN SOUZA
AUGUST 14, 2009

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INDEX

1		
2		
3	TESTIMONY OF JOHN SOUZA	PAGE
4	Examination by Mr. Budge	4
5	Examination by Mr. Smith	97
6	Examination by Mr. Holmes	109
7		
8	EXHIBITS	
9	No. 33 Bruce Brown CPA file.	38
10	No. 34 Copy of check number 1881	112
11	No. 35 10/20/08 letter.	92
12	No. 36 1/13/09 letter.	92
13	No. 37 4/3/09 letter.	92
14	No. 38 5/18/09 letter.	92
15	(Exhibits retained by counsel.)	
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 THE DEPOSITION OF JOHN SOUZA was taken
2 on behalf of the Plaintiffs at the offices of
3 Racine, Olson, Nye, Budge & Bailey, 201 East
4 Center, Pocatello, Idaho, commencing at 10:10 a.m.
5 on August 14, 2009, before Rodney Felshaw,
6 Certified Shorthand Reporter and Notary Public
7 within and for the State of Idaho, in the
8 above-entitled matter.
9 APPEARANCES:
10 For the Plaintiffs:
11 RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED
12 BY MR. RANDALL C. BUDGE
13 P.O. Box 1391
14 Pocatello, Idaho 83204-1391
15 For Jerry Beus:
16 HAWLEY, TROXELL, ENNIS & HAWLEY LLP
17 BY MR. STEPHEN C. SMITH
18 P.O. Box 1617
19 Boise, Idaho 83701-1617
20 For John Souza:
21 MR. THOMAS J. HOLMES
22 P.O. Box 967
23 Pocatello, ID 83204
24 Also Present: Mark Shaffer, Jerry Beus, Doug
25 Beus.

1 JOHN SOUZA,
2 first duly sworn to tell the truth relating to
3 said cause, testified as follows:
4
5 MR. BUDGE: For the record, let's note that
6 this is the time and place for the taking of the
7 deposition of John Souza pursuant to notice.
8 Present we have Randall Budge and Mark Shaffer on
9 behalf of the plaintiffs, who are not here. John
10 Souza, the witness, is also a defendant and he is
11 present with his attorney, Tom Holmes. And we
12 also have Jerry Beus, a defendant, present with
13 his attorney of record, Steve Smith.
14 Counsel, can we have the usual
15 stipulation that any objections will be reserved
16 to the time of the trial, except as to the form of
17 the question?
18 MR. HOLMES: Yes.
19 MR. SMITH: Yes.
20 EXAMINATION
21 BY MR. BUDGE:
22 Q. For the record, John, state your name
23 and business address and age and date of birth.
24 A. John Souza, 239 North Inc., Pocatello,
25 Idaho. Date of birth is [REDACTED] One other thing

1 you wanted, other than date of birth. I can't
2 remember.

3 Q. Have you had your deposition taken
4 before?

5 A. I have.

6 Q. And how many times?

7 A. Oh, I would say probably two or three.

8 Q. And that would have been in
9 conjunction with other civil litigation?

10 A. Yes. Well, actually, it was criminal
11 post-conviction matters, things such as that.

12 Q. And I think prior to your deposition
13 we provided you with copies of the other
14 depositions taken to date. That would be those of
15 Jerry Beus and Dallas Beus and Doug Beus, Tom
16 McBride and Max Hemmert. I think you also were
17 provided with copies of the deposition exhibits
18 that were from those prior depositions which are
19 in front of you today?

20 A. Yes, sir.

21 Q. Did you have an opportunity to review
22 those to prepare for your deposition?

23 A. I did. I reviewed some more carefully
24 than others, but I did look at them.

25 Q. And you've had an opportunity to

1 consult with your attorney, Mr. Holmes, in
2 preparation for the deposition?

3 A. Yes, sir.

4 Q. You've also had an opportunity to
5 review the complaint and some of the other files
6 and records maintained by you and your law firm
7 which you brought with you today?

8 A. I have.

9 Q. And you brought with you today a box
10 that has various records. Just give us a brief
11 summary of what is in those records that you
12 brought.

13 A. I would categorize it into two
14 different phases, I guess. One would be the more
15 current information, basically from October of
16 2008 to present. This would be the documents that
17 were prepared and exchanged at the time that there
18 were other informal proceedings concerning this
19 matter. It's the more current stuff in terms of
20 litigation itself, items that have been obtained
21 or copies that have been sent to me.

22 The older information concerns primarily
23 information that Max and Monte would have
24 accumulated over the years. I found some of those
25 old files. That would include old wills. Just

1 documents, letters of transmission, copies of tax
2 notices. Just general information in that regard.

3 Q. Thank you. In the interest of time,
4 John, if it's okay, rather than going through
5 those files in detail now, if it's acceptable to
6 you, can you just make them available to counsel
7 at a later date to review if it might be necessary
8 pertaining to some issue that comes up in this
9 case?

10 A. Sure.

11 Q. And for purposes of your deposition, I
12 think we have most of the documents that at least
13 counsel think are relevant to the issues that are
14 in that binder there that we've previously marked
15 with other witnesses. If something comes to mind
16 during the course of your deposition that you want
17 to supplement or review your records or have
18 questions about, feel free to do that.

19 A. Okay.

20 Q. Would you just give us a capsule
21 summary of your educational background, starting
22 with high school and moving forward from there?

23 A. I graduated from high school in 1964.

24 I went to -- I got my undergraduate from the
25 University of Arizona. I went into Marine Corps

1 during Viet Nam. I went back to law school and
2 graduated from the university of Arizona. Then I
3 started -- I clerked in Boise for a time. Then I
4 came to work for Max Whittier in 1975.

5 Q. And where did you graduate from high
6 school?

7 A. Tracy, California.

8 Q. How long have you lived here in the
9 Pocatello area?

10 A. Since July of 1975.

11 Q. And generally describe the nature of
12 your current practice?

13 A. I do a considerable amount of criminal
14 defense work and some selective civil work. I
15 would say the majority is criminal defense work at
16 this time.

17 Q. And you're a member of the Idaho State
18 Bar in good standing?

19 A. Yes, sir.

20 Q. And your current license number?

21 A. 1603.

22 Q. Are you licensed in any other state?

23 A. No, sir.

24 Q. You are the trustee of the Lynn G.

25 Beus Family Trust. Do you have other prior

1 experience or current experience acting as the
2 trustee of a trust?

3 A. No, sir.

4 Q. Would this be the only trust that
5 you're the trustee of at this point?

6 A. Yes, sir.

7 Q. Any prior experience with other
8 trusts?

9 A. No. I guess collaterally, when the
10 file -- the trust was in the office and Max and
11 Monte were involved I had some collateral
12 knowledge of what was going on.

13 Q. I think you're acquainted with Lynn
14 Beus, who passed away, I believe, from the record
15 we have, January 5th, 1986?

16 A. I'm sure I met him when he came into
17 the office to see Max.

18 Q. And were you are also personally
19 familiar with his wife Beth Beus, who passed away
20 a year ago, June 10th, 2009?

21 A. Yes, sir.

22 Q. When did you first become acquainted
23 with Lynn Beus?

24 A. Well, again, I wouldn't call it a --

25 there was no lawyer/client relationship other than

Page 10

1 him being a client of the office at that time. I
2 remember he would come in and sometimes stop to
3 see Max and visit. If they were sitting around,
4 I'm sure I may have sat in on a conversation, but
5 I didn't have any other contact other than in that
6 way.

7 Q. You weren't doing personal work for
8 him?

9 A. No.

10 Q. And with respect to the preparation of
11 his estate plan, would it be accurate to say you
12 didn't have any involvement with that?

13 A. That's correct.

14 Q. Did you have any involvement in any
15 subsequent review, updates, of his estate plan?

16 A. No, sir.

17 Q. Was Max his primary lawyer?

18 A. Yes, sir.

19 Q. When was it that Max passed away?

20 A. I don't know. I'm sorry, I couldn't
21 tell you. I don't remember the exact date. It's
22 been a number of years.

23 Q. Explain your acquaintance with Beth
24 Beus, how that came about and how you knew her?

25 A. Well, on occasion I would talk to her

1 on the phone. I've been to her residence in Soda
2 Springs.

3 Q. That would have been in conjunction
4 with your work as trustee of the trust?

5 A. Yes. I didn't have any relationship
6 with her prior to that, so it would be in the
7 context of either checking on something with her
8 or questions she might have. Or sometimes I
9 talked with Jerry and he would say why don't you
10 run this by Beth, talk with her. So on occasion I
11 would call her.

12 Q. I think we can get to the date from
13 the documents later that you began as trustee.
14 Once we establish that date, your relationship
15 with Beth Beus would have begun when you took over
16 as trustee of the trust?

17 A. Right.

18 Q. And you didn't know her personally,
19 hadn't done any legal work for her prior to that
20 time?

21 A. Not that I can recall. If I had met
22 her, she would have been in the office with
23 someone or for something, but I don't remember
24 that particularly.

25 Q. Sometime after you began working with

Page 12

1 her as trustee, did you do any estate planning
2 work for her personally?

3 A. No, sir.

4 Q. You hadn't done anything at all, like
5 preparing a will or no other legal work at all?

6 A. No.

7 Q. What about Margery Beus, who would
8 have been the first wife of Lynn Beus and the
9 parents of Doug, Dallas and Jerry, were you
10 personally acquainted with her?

11 A. No, sir no.

12 Q. And you didn't do any legal work for
13 her?

14 A. No.

15 Q. When did you first become acquainted
16 with Jerry Beus?

17 A. Well, again, I think in his
18 association with Max and Monte, Jerry would come
19 in and we would shake hands and say hello, but
20 that was the extent of our relationship at that
21 time.

22 Q. When Max was still alive were you
23 doing any legal work for Jerry or was that all
24 handled by Max?

25 A. I think Max and Monte did the work. I

1 didn't do any for him.

2 Q. Jerry gave us some testimony in his
3 deposition that you had prepared an estate plan
4 for him at some point in time. I think he had
5 some checks to that effect that we might review
6 later. Do you recall preparing his will for him?

7 A. I did. That was recently.

8 Q. Do you recall when that was?

9 A. I'm going to say within the last
10 couple of years.

11 Q. Okay. Would you have a file on that
12 with you that would help you identify the date?

13 A. I don't believe I brought that
14 information. I brought the stuff related to the
15 estate, but not that file.

16 Q. That was basically just estate
17 planning work you did for Jerry?

18 A. Yes.

19 Q. There were some -- let's look at
20 exhibit 23 in the book, if you would, please.

21 These are some statements that Jerry produced and
22 we discussed during his deposition. If you'll
23 look at that, the first page seems to be some
24 recent work in 2008. And the second page would
25 reflect from Jerry's checkbook ledger some checks

1 paid to you back in 2006 and 2007. If you'll look
2 at the first page again, the billings in 2008,
3 would that have been relating to matters
4 pertaining to the trust that's in dispute in this
5 current litigation?

6 A. Yes, sir.

7 Q. And the reason that would have been
8 billed to Jerry personally is because he was
9 essentially paying directly the trust bills?

10 A. That's correct.

11 Q. If you'll look at the second page,
12 there are some bills to you -- excuse me. There
13 is some check information of checks made to you in
14 2006 and 2007. It was categorized as water and
15 legal fees. Do you recall doing legal work
16 pertaining to water right matters relating to the
17 trust's real property?

18 A. Yes, sir.

19 Q. And was that also work that you would
20 have been doing in the capacity of trustee and
21 that Jerry paid the bills on because he was paying
22 bills directly rather than through you as trustee?

23 A. Yes, sir.

24 Q. And while we're on that exhibit 23, if
25 you'll look at the third page, this is a summary

1 of checks that Jerry produced in his deposition as
2 being payments that he made to Beth for lease
3 payments in the years 2004, 2005, 2006 and 2007.
4 During that time period would Jerry also have been
5 paying various trust expenses as well as the rent
6 owing to Beth Beus directly to her?

7 A. Yes.

8 Q. And that was part of an arrangement
9 that we'll talk about later. But that was part of
10 an arrangement that you and Jerry made to save
11 trustee fees and expenses, that Jerry would simply
12 pay the rent directly to Beth and pay all the
13 trust expenses?

14 A. Yes, sir.

15 Q. So these earlier bills that are part
16 of exhibit 23, page one and two, statements from
17 you to Jerry Beus, would in fact relate to legal
18 work that you did for the Lynn G. Beus Trust that
19 he was paying you directly for?

20 A. Yes, sir.

21 Q. If you'll look at the last page of
22 that exhibit 23, from Jerry Beus's checkbook
23 ledger, he's reflecting in 2008 some monthly land
24 payments of forty-nine ninety-two fifty that went
25 to Caribou Title. Would that, to your knowledge,

1 be payments that he also was paying relative to
2 the note and mortgage with DBL that was escrow for
3 payment purposes at Caribou Title?

4 A. Correct. It would be my understanding
5 that these would reflect information he took out
6 of the documents that he provided informally at an
7 earlier date when we first began discussing the
8 estate after Beth's death. These are documents
9 that he prepared at that particular time. I
10 think, anyway, based upon what I'll call the
11 containers that he supplied in terms of his
12 financial information for each of the years. You
13 may recall that he had each of those containers.
14 I don't know how else to call it. File containers
15 where he brought the documents in and that's where
16 the information came from. And probably from his
17 check register.

18 Q. Other than the estate planning work
19 for Jerry in the last couple of years, have you
20 done any other legal work for him personally?

21 A. No, sir.

22 Q. How would you describe your
23 relationship with Jerry Beus and has it changed
24 over time?

25 A. Well, I think certainly the business

1 side of it has changed in the sense that over the
2 years I think we've become more comfortable with
3 each other in the way in which we discuss the
4 trust and the ranch. I think there's been an open
5 relationship so that he can call if he has any
6 questions and I would call him back. And I've
7 been to the ranch on a number of occasions. We
8 talk about what was going on, go and look at
9 things. I think it's cordial.

10 Q. No conflict that you know of?

11 A. I'm not aware of any.

12 Q. And you're also acquainted with Dallas
13 and Doug Beus?

14 A. More recently, yes.

15 Q. When did you first become acquainted
16 with them?

17 A. You know, I was thinking about when I
18 first met them. I don't remember meeting them
19 face to face until Beth's death. I went to Soda
20 Springs to the house to meet with the family.
21 Jerry wasn't there, but his sisters were there and
22 Dallas and Doug. I'd had some telephone
23 conversation with them on occasion in the past, at
24 least Dallas. I don't remember for sure Doug.
25 But I don't remember meeting them face to face

1 until then.

2 Q. That would have been at the funeral in
3 June of 2008?

4 A. It was actually -- I didn't go to the
5 funeral. It was either that day or the next day
6 that I went down.

7 Q. You mentioned the sisters. That would
8 be the stepsisters to Jerry, Doug and Dallas? I
9 believe their names are Karen Schrade and Lenae
10 Call?

11 A. That's correct.

12 Q. They would have been the children of
13 Lynn and his first wife -- excuse me. Those would
14 be the daughters of Lynn and Beth Beus?

15 A. Yes.

16 Q. Max Whittier's name appears on a
17 number of the documents. He was reflected as
18 personal representative in the will and also the
19 first trustee in the will. Would your first
20 acquaintance with Max Whittier be when you came to
21 work for him in 1975?

22 A. Yes.

23 Q. Did you work for or with him
24 continuously from '75 up to his death?

25 A. Sometime before his death he actually

1 left the office retired. So there was a period
2 of time that he was not in the office prior to his
3 death. But, yes.

4 Q. In conjunction with the administration
5 of the Lynn Beus estate and trust, were you
6 involved in that or did Max handle that solely?

7 A. He handled that. Now, again, I don't
8 remember my dates exactly, but Monte would help
9 Max on a lot of different cases and projects. So
10 if Monte was involved I don't remember for sure.

11 Q. Max was the primary person and you
12 weren't involved directly?

13 A. That's correct.

14 Q. When did Monte come into the practice
15 with you and his father?

16 A. I don't remember.

17 Q. And he left the firm at some point due
18 to health reasons?

19 A. No. He left to take a position in
20 Idaho Falls. He went there for a few years and
21 then went to Boise. It's only more recently that
22 he's had health problems.

23 Q. Do you know approximately how long it
24 has been since he practiced with you?

25 A. I'm going to guess eight or 10 years.

1 Q. During the course of your dealings
2 with Beth Beus, when she was beneficiary of the
3 trust and still alive, did she ever have
4 independent counsel that represented her that you
5 know of?

6 A. Not that I'm aware of.

7 Q. And did Jerry Beus ever have
8 independent counsel that you know of?

9 A. Not that I'm aware of.

10 Q. Were there ever any written conflict
11 of interest waivers that occurred with respect to
12 the work you did with Jerry when you did his
13 estate planning work?

14 A. No.

15 Q. No written waivers that were related
16 to that?

17 A. No.

18 Q. Let's go through some of these
19 documents, John. Exhibit 1 is the Lynn G. Beus
20 will. If you'll look at the last page of that
21 will, it is dated June 2nd of 1983. It appears
22 that that is Max Whittier's signature that
23 notarized the signature at the bottom. Do you
24 recognize that?

25 A. I do.

1 Q. So based on the review of your files,
2 would you agree that that was the will that Max
3 personally prepared for Lynn Beus?

4 A. Yes.

5 Q. When would you first have seen that
6 will? Would that have been --

7 A. Oh, I don't remember really seeing it
8 until Beth's death. Prior counsel for Dallas and
9 Doug wanted copies and I think that's when I first
10 dug through some of these old files and found it.
11 And then I think that person supplied your office
12 with a copy as well at a later date.

13 Q. When the will discusses -- let me back
14 up. When Lynn died did you have any involvement
15 in the probate of the estate?

16 A. No, sir.

17 Q. That would have been handled totally
18 by Max?

19 A. Yes.

20 Q. So you wouldn't have any particular
21 knowledge of what debts might have existed against
22 the property at that point in time?

23 A. No.

24 Q. Would it have been after you took over
25 as trustee, after Max and Monte were gone, would

1 have been the first occasion that you really would
2 have had any reason to look at the particulars of
3 Lynn's will?

4 A. That's correct.

5 Q. Let me ask you about some provisions
6 in the will. If you'll look at page three it
7 talks about specific gifts to the spouse, Beth.
8 Those gifts would have already occurred prior to
9 the time that you became involved, would that be
10 accurate?

11 A. Yes, sir.

12 Q. And that would have come out of the
13 estate and that property would have already been
14 gone and not part of the trust you were dealing
15 with?

16 A. That's correct.

17 Q. And if I understand paragraph 6B on
18 the trust, essentially the assets were to be held
19 in trust and maintained and operated for Beth's
20 benefit, who was receiving the income during her
21 life?

22 A. Some of the income, I guess, to the
23 extent that she was paid the spousal support.
24 There's other income I'm sure that came in that
25 Jerry used to run the farm.

1 Q. During the period that you were
2 trustee initially, the rent payment was coming to
3 you as trustee and you paid the expenses and then
4 Beth would get what was left, is that basically
5 correct?

6 A. No. The money would come in and Beth
7 would be paid pretty much off the top. That was a
8 top priority, get her paid. Then when different
9 payments came in Jerry would either use that to
10 accumulate to pay Beth, or other expenses would be
11 paid. But it wasn't the balance to her. As I
12 understand it, the annual payment that was agreed
13 to was paid. So I don't know if any more was paid
14 to her other than what the agreement was in terms
15 of the amount.

16 Q. And what was that?

17 A. I don't remember exactly. It seems to
18 me, if I remember right, the amount was more than
19 what it was at a later date. It became \$12,000
20 for a good portion of the time I was involved. At
21 an earlier date there was an agreement for more,
22 but then there was a provision as to who was going
23 to pay the expenses out of that lease payment. I
24 think the net to her was about the same, if I
25 remember right.

1 Q. Okay. So what we have is a situation
2 where the property that's commonly referred to as
3 the Beus ranch or farm, was all being leased to
4 and operated by Jerry Beus, the oldest son,
5 correct?

6 A. Correct.

7 Q. And pursuant to those various lease
8 agreements, Jerry would have a rent obligation to
9 the trust?

10 A. Right.

11 Q. And at least early on the payment
12 would come into the trust, the trust would pay
13 taxes and insurance and the like. And Beth would
14 receive the net amount or would she receive a
15 specific amount?

16 A. My memory is she received a specific
17 amount. Again, that's my memory.

18 Q. Just continuing on with the will,
19 because it does relate to the issues we have here.
20 At the bottom of that page three, in paragraph B2,
21 it basically states that upon death of my spouse,
22 and this is Lynn saying, upon the death of my
23 spouse, the trust will close and terminate and all
24 remaining assets, including any undistributed
25 income, if any, shall be distributed as

1 hereinafter set forth.

2 There wasn't any question about that,
3 Beth had the income during her life and upon her
4 death essentially the will provided for the
5 remaining property to go to the three sons, Jerry,
6 Dallas and Doug?

7 A. Correct.

8 Q. And Jerry had certain first options to
9 lease and he had the first option to buy if it
10 sold, as is spelled out on page four of the will?

11 A. My copy is not -- I can't read it very
12 well. I'll take it for what you're saying.
13 That's my memory as well.

14 Q. Okay. Let me look at the last
15 paragraph on what's titled paragraph eight of the
16 will, which is on page four near the bottom. It
17 is hard to read. It basically states, and let me
18 read it from my copy, quote, if my children are
19 unable to agree upon the operation, management or
20 division of any of the property following the
21 death of my wife, my trustee shall be instructed
22 to sell the same and to divide the proceeds
23 equally between Dallas, Jerry and Doug after all
24 expenses, taxes, liens of any kind against the
25 trust property is paid.

1 So is it your understanding that at
2 some point in time following the death you became
3 aware of the fact that the three boys were not
4 going to be able to agree among themselves for
5 continued operation of the property?

6 A. Yes. It wasn't just a single event.
7 There was a significant time where there'd been a
8 lot of back and forth, but, yes.

9 Q. Certainly sometime in the fall of 2008
10 you were aware that Jerry and Doug and Dallas
11 weren't going to reach an agreement for continued
12 operation?

13 A. I wouldn't agree. I think it's more
14 recent, within the last few months. We didn't
15 even start meeting until October, if my memory
16 serves me right. At that time there wasn't any
17 conversation. I would say no, okay.

18 Q. But at some point in time you became
19 aware that they weren't going to agree and the
20 property would have to be listed and sold?

21 A. Yes. And it was listed.

22 Q. I know the listing occurred, from the
23 documents we'll get into later, sometime in May of
24 2009 with Gate City Real Estate, correct?

25 A. Correct.

1 Q. And would have been sometime prior
2 to that, according to your recollection, that you
3 would have been aware that the property had to be
4 listed and sold?

5 A. Correct.

6 Q. And so when you did make the decision
7 to move forward with the listing and sale, that
8 would be in your mind to fulfill the provisions of
9 the will that we discussed a moment ago that says
10 if they can't agree the property needs to be sold
11 and the proceeds divided?

12 A. Yes.

13 Q. Do you know how long Jerry had been in
14 possession and operating the property prior to his
15 father's death?

16 A. As far as I know he always lived on
17 the property. I think he was in the military and
18 had some other jobs that were outside the area,
19 but I think generally speaking he'd been on that
20 property most of his life.

21 Q. Let look at exhibit 20. Do you
22 recognize that as a listing agreement putting the
23 property for sale with Lisa Ehres of Gate City
24 Realty?

25 A. Yes.

1 Q. And that's your signature on that
2 agreement?

3 A. It is.

4 Q. Before doing so did you basically have
5 the consent of Jerry, Doug and Dallas and their
6 counsel to proceed with that listing?

7 A. Well, I guess in essence, yes. It
8 came in different forms because -- I'll just say
9 yes.

10 Q. What was the reason you decided to go
11 ahead and list the sale? Was it the lawsuit that
12 was filed some weeks before or were you just
13 simply fulfilling the directive given in the will?

14 A. I was fulfilling. There'd been an
15 extreme amount of conversation about whether or
16 not the property could be listed and whether or
17 not it would be even in an estate or in a
18 condition to whereby it would be an appropriate
19 listing. That would include the many issues that
20 are listed as conditions in the addendum to the
21 lease itself.

22 You know, in my opinion, it was simply more
23 than just the event of filing the document. There
24 was considerable conversation, communication,
25 dialog about whether it was going to be listed,

1 how it was going to be listed. I can't enumerate
2 those if you want. You and I met at the time that
3 this listing was sent in so you could give me your
4 input in terms of conditions. And Mr. Smith as
5 well, we spoke on the phone. I think they also --
6 I never saw their documents, but I think they
7 included what they felt were issues that needed to
8 be disclosed to prospective buyers.

9 Q. To put everything in proper
10 perspective, I think it would probably be accurate
11 to say that there was some period of time
12 following Beth's death that there was some dialog
13 and discussions ongoing directly between the three
14 boys?

15 A. Yes.

16 Q. And there was some dialog for a period
17 of time going on between the boys and their
18 counsel. And during that time would it be
19 accurate to say that you essentially were trying
20 to see what might come of that?

21 A. Yes. There was a whole history of
22 what was going on. At the time I think, when the
23 boys finally got together as a result of Beth's
24 death, then I think there was an expectation, or
25 at least I know from Jerry's standpoint, that the

1 boys could work this out. That they would be able
2 to sift through their differences. There was a
3 lot of information to exchange back and forth.
4 The boys went to their first counsel who did not
5 follow through with that. And there were periods
6 of time when there was no contact, you know, from
7 anyone.

8 I would talk to Jerry and he would say
9 we're talking about, trying to resolve this thing.
10 Even at one point Dallas, my understanding, and
11 this is from him personally because he came to my
12 office with Jerry, he was going to go in with
13 Jerry to pay Doug out. It just wasn't a matter of
14 a certain day there was a consensus, because there
15 wasn't.

16 Q. The point is, for a period of time
17 there was some ongoing dialogue; at some point
18 that broke down; and then there was some details
19 to be worked out for purposes of the listing that
20 took some time, which ultimately led to this
21 listing agreement, exhibit 20?

22 A. Well, I would characterize it as more
23 than detail. There was significant underlying
24 fundamental facts that were not resolved. One
25 would be the appraisal of the property, what are

1 you going to list it for. I think there's still a
2 dispute in terms of what the farm is worth.

3 Number two, I think there was an a issue in
4 terms of the amount of acreage, what was
5 irrigated, what wasn't. There was the issue of
6 the litigation that had to be disclosed. There
7 was the issue of the conservation easement that
8 was put on the condition. So all of these
9 together were going on. I think detail might be
10 not really describing the extent to which there
11 was still significant issues.

12 Q. The listing agreement that ultimately
13 occurred on May 19th of this year, the price was
14 set based upon the only appraisal that was then
15 available, which was the one that Robert Fellows
16 performed; is that correct?

17 A. That's correct.

18 Q. And that would be exhibit 16, the
19 Fellows appraisal dated November 21st, 2008?

20 A. That's correct.

21 Q. Are you aware that there was a more
22 recent appraisal obtained by Jerry Beus?

23 A. I am.

24 Q. Has a copy of that been provided to
25 you?

1 A. It has been.

2 Q. And was that through him or through
3 what your counsel obtained?

4 A. Mr. Beus brought a copy to my office.

5 Q. And is there anything that you intend
6 to do with that particular listing -- excuse me,
7 with that particular appraisal that would change
8 or affect the property listing you currently have
9 with Gate City?

10 A. I would hope, anyway, and this is my
11 maybe optimistic view, but at some point there
12 would be an agreement between the brothers in
13 terms of what is going to go forward from this,
14 either by way of continued litigation or some
15 resolution. And if there's a consensus in terms
16 of what a fair market value of that property would
17 be, then we would ask the realtor to amend the
18 listing to show that value.

19 Q. But at this point you're kind of
20 leaving it up to the three brothers to decide what
21 they want to do with the appraisal; and it would
22 be their mutual agreement, if they can reach one,
23 to change the price at which the property is
24 listed?

25 A. Either that or some directive to me

1 from the heirs of the trust to something or
2 leave it the same. Not to be smart alecky, but
3 let's say there was a vote taken and who wants to
4 be listed as the value. Dallas and Doug say we
5 think it should stay at two nine and Jerry says
6 something else. Well, Jerry might get outvoted in
7 terms of what the listing price will be.

8 Q. Have there been any offers received
9 that you're aware of to buy the property?

10 A. None that I'm aware of.

11 Q. Have you had any conversations with
12 the realtor, Lisa Ehres, about some of the
13 difficulties that might be encountered, one
14 because of litigation; or, two, because of
15 questions over the number of irrigated acres?

16 A. Well, those conversations were early
17 on at the first listing, because she was -- I
18 think she thought that there could be an agreement
19 in terms of more specifics as far as the listing
20 and fewer conditions. So I think her general
21 statement, and I don't remember the exact words,
22 but generally this will be extremely difficult to
23 get any offers with the conditions. I believe
24 that my counsel has had a more recent conversation
25 with her, but I wasn't privy to that.

1 Q. Let's look at exhibit 2. You'll
2 recognize that that is a trust agreement that was
3 dated May 14th, 1987. That is some 16 months
4 after Lynn Beus's death January 5th of '86. When
5 you look at the introductory paragraph it
6 indicates the agreement is entered into between
7 R. M. Whittier as personal representative of the
8 estate of Lynn G. Beus as grantor, and also by
9 R. M. Whittier as trustee.

10 And then if you'll look at the
11 signature page it shows that Beth Beus signed on
12 to that, even though she wasn't listed as a party
13 in the first paragraph. And then if you'll note
14 on the bottom of page eight, paragraph 24, there
15 is mention in that paragraph of Beth, under the
16 paragraph entitled ratification, that says, I,
17 Beth Beus, do hereby place my signature hereafter;
18 and do hereby ratify the action taken. With the
19 income to be paid hereafter during my lifetime.

20 Did you have any involvement in the
21 preparation of that document?

22 A. No, sir.

23 Q. And as you acted as trustee in
24 administering the trust, did you consider that a
25 document that was there to make sure the property

1 of Lynn Beus and of Beth Beus was all being
2 managed as a single trust asset as opposed to Lynn
3 having his half interest and Beth owning her half
4 interest, which was not in the trust?

5 A. Well, I don't know if I would
6 characterize it that way. I can't say that this
7 document was necessarily something that was
8 referred to on a regular basis. But my
9 understanding was that Beth had no ownership
10 interest in the real estate of the trust. She had
11 an interest in the income to provide for her,
12 those payments we've talked about.

13 Maybe I'm misunderstanding the question. I
14 mean, to the best of my knowledge Beth never, the
15 few times I spoke with her, never asserted any
16 interest in the real estate itself.

17 Q. So you always considered and acted as
18 trustee as if the entire ranch was in the trust?

19 A. Right.

20 Q. How did you handle or treat or
21 evaluate this trust agreement, exhibit 2, as you
22 administered it? Did it have any impact at all?

23 A. Well, it had impact because it was in
24 effect and was followed and was the document that
25 set out the boundaries of the agreement at that

1 particular time, as I understood it.

2 Q. If you'll look at page two of that
3 trust agreement, at the bottom of paragraph six,
4 the last sentence there says, however, the trustee
5 shall attempt to follow the desires of Lynn G.
6 Beus as set forth in his last will and testament
7 dated June 27th, 1983. That would seem to
8 indicate that this trust was to be handled
9 consistent with the testamentary trust provisions
10 that were contained in Lynn's will, would you
11 agree?

12 A. I would agree.

13 Q. You didn't really see anything between
14 this particular trust agreement that created any
15 conflict or concern or problem, from your
16 perspective as trustee, trying to manage that
17 testamentary trust that was set out in Lynn's
18 will?

19 A. No.

20 Q. Page three of that trust agreement, if
21 you would look at that. Do you see the top
22 paragraph A that states neither the principle nor
23 the income of the trust estate herein created
24 shall be liable for the debts of the beneficiary.
25 And the beneficiary shall not have any power to

1 sell, assign, transfer or encumber in manner,
2 so on and so forth, the trust estate?

3 A. Yes.

4 Q. How did you interpret or apply that as
5 you administered the trust? What did you
6 understand that to mean?

7 A. My understanding was that -- I don't
8 know that I really -- honestly, I haven't gone
9 back and reviewed that particular paragraph.

10 Q. If you'll look at paragraph 12 on that
11 same page, it seems to be entirely consistent with
12 the testamentary trust provisions in the will.

13 You'll note there it says that the trustee has
14 discretion to sell the estate if the beneficiaries
15 can't agree as to the division of the property.
16 That would seem to me to be consistent with and
17 similar to the provision in the will that we
18 discussed earlier. Would you concur with that?

19 A. I agree.

20 Q. Did you have an opportunity to review
21 the file from Bruce Brown that has some tax
22 returns in it?

23 A. No.

24 Q. Were you aware that Bruce Brown was
25 the one preparing the tax returns for a period of

1 time when Max Whittier was trustee and he did some
2 later when you were trustee?

3 A. Yes, I'm aware of that, but I haven't
4 seen his file.

5 MR. BUDGE: Let's go off the record and
6 take a minute.

7 (Off the record.)

8 (Exhibit 33 marked.)

9 Q. (BY MR. SMITH) We'll go back on the
10 record. I'm handing you what is marked as exhibit
11 33, a copy of the file obtained from CPA Bruce
12 Brown. I believe you indicated to me sometime
13 early on in this proceeding that Bruce Brown had
14 prepared the tax returns and you authorized him to
15 provide information to us?

16 A. Yes.

17 Q. I don't remember whether it came
18 directly from him or through you, but my
19 recollection is it came from him.

20 A. Right.

21 Q. And we have the original file here.
22 Exhibit 33 is a copy of the original file and
23 we'll make that available for you and counsel to
24 look at on a break if you want to.

25 If you'll look through those returns

1 with me, John, the st one is on top and the
2 oldest one on the bottom. If my reading of them
3 is correct, you can see that all the returns filed
4 up through 1996 reflect Max Whittier as the
5 trustee?

6 A. Okay.

7 Q. And then if you look at the very next
8 return after that, the '97 return, is the first
9 time I could see that you would have been
10 reflected as the trustee. Do you see that?

11 A. I'm trying to find it here. (Pause.)

12 Okay, I see it now.

13 Q. And so, at least based upon the tax
14 return records, would you agree that that
15 establishes the fact that Max ceased being trustee
16 of the trust sometime after the 1996 return and
17 from that point on, 1997, you probably were acting
18 as trustee?

19 A. No. Monte was the trustee. He was
20 appointed as successor trustee at some point. Why
21 he didn't file any returns, I don't know the
22 answer to that, but I know that Monte was a
23 successor trustee after his dad because his dad
24 resigned when he was going to quit the practice.

25 Q. If you'll look at the '97 return that

1 you're on, and then you see the 2000 tax return,
2 you're reflected as trustee on it?

3 A. I understand that. You're asking me,
4 though, if I followed Max directly. My memory is
5 I did not, that Monte was in there between.

6 Q. Okay. No problem with that. But
7 basically in at least the '97 return and the 2000
8 return you were reflected as trustee?

9 A. Correct.

10 Q. You mentioned that Monte had become
11 successor. Was that in an actual formal
12 proceeding or was it done by written consent of
13 the parties or how did that come about?

14 A. It was a formal proceeding. I
15 remember seeing something in these documents. For
16 example, there was a letter from Max to Beth
17 indicating what was going to happen. I'm not
18 sure, but I think there was maybe a copy to Doug
19 and Dallas. I'm not saying that absolutely. I
20 know there were documents sent to Caribou County
21 for Monte to be successor trustee.

22 Q. Rather than taking the time now to go
23 through the file, we have an understanding that
24 you will check your file and if you can identify
25 that there was some formal paperwork in there

1 evidencing Monte's appointment as personal
2 representative, that you'll produce it and we'll
3 add it as an exhibit later.

4 A. Okay.

5 Q. At some point you took over from
6 Monte. Do you recall if there was some formal
7 court proceeding or was that simply a matter of
8 you continuing on the work of the firm as
9 successor trustee?

10 A. I don't recall the formality, but I
11 did step in and continue with what Monte and Max
12 had done.

13 Q. As I review those returns that we've
14 been discussing in exhibit 33, and you may feel
15 free to look at them if you want, but you can see
16 in those returns, and also the accompanying
17 support documents in Mr. Brown's file, which
18 includes some of the payment statements to Farm
19 Credit Services and what appears to be a copy of a
20 checkbook ledger that was maintained on the trust
21 deposits and expenditures, it would appear that at
22 least up through 2000 rent payments and funds were
23 coming to you or Max as trustee and the expenses
24 were then being paid through that account and
25 checks were being issued to Beth. Then after 2000

Page 42

1 that may have changed at some point in time where
2 instead of having the funds come into the trust
3 and the expense paid through the trust, there was
4 an understanding that Jerry just took over and
5 paid directly?

6 A. Yes.

7 Q. Is that basically what happened?

8 A. That's correct.

9 MR. HOLMES: I think we need to make it
10 clear that to the extent we have missing years
11 here, we aren't saying that that happened in the
12 missing years. Perhaps Jerry took over for a
13 couple of years and then it went back to the
14 trust for some reason. We just simply don't know
15 as we sit here today.

16 MR. BUDGE: That's correct.

17 Q. (BY MR. BUDGE) Just to clarify the
18 record, the tax returns that we're relying on are
19 up to Max Whittier's last return in 1996. And the
20 two returns that John Souza appears as trustee on
21 would be for the years 1997 and 2000 only.

22 Take just a moment, John, to confirm
23 that the question I asked you is accurate, that
24 you can see that the checkbook ledger, the tax
25 returns and some of the bills would seem to

1 indicate that money came into the trust and was
2 paid out of the trust.

3 A. That's correct.

4 Q. At some point in time that particular
5 arrangement for the handling of the receipt of
6 money and the payment of the funds through the
7 trust changed; is that correct?

8 A. Yes.

9 Q. And do you recall about when that
10 happened? Would it have been sometime after the
11 2000 return?

12 A. Yes.

13 Q. And what was the circumstance that
14 gave rise to the change and what happened?

15 A. I think there was a consensus. In
16 talking with Bruce Brown and with Jerry, it was
17 kind of becoming a duplicative effort. There
18 wasn't really a need -- since everything was being
19 run through the farm account, there wasn't a need
20 to have the additional level of accounting, I
21 guess. So the consensus was to have the money go
22 to Jerry and he would disburse. And then the
23 money would stay -- he would have the use of those
24 funds to make the payments.

25 Q. So that consensus was reached between

Page 44

1 you as the trustee, by Jerry Beus as the lessee of
2 the property, and by Beth Beus who was receiving
3 the income as beneficiary?

4 A. I don't have an exact recollection of
5 talking to her specifically, but it's my
6 understanding that Jerry had spoken with her and
7 with Bruce Brown, because he was aware of what
8 should be done or could be done.

9 Q. Take the time to look at that if you
10 need to, but it appears that during the period
11 reflected on those tax returns, when the money was
12 coming through the trust, you could find checks
13 that were being paid to the Federal Land Bank
14 annually in the amount of \$76,069.90. And if
15 you'll take a look at Max Whittier's last tax
16 return, if you would please, the 1996 return,
17 you'll see that there is a Farm Credit Service
18 statement that reflected that annual payment. Do
19 you see that, John?

20 A. I'm still looking for it. Okay.

21 Q. Do you see that that reflects the
22 annual payment of \$76,069.90?

23 A. Yes.

24 Q. And you see the balance that then
25 existed after that payment in 1996 of \$26,251.37?

1 A. Yes.

2 Q. And if you go through all of those
3 returns, and you can take the time if you want to
4 check it, but it appears that those same payments
5 were being made year to year through the trust
6 during that period?

7 A. Yes.

8 MR. BUDGE: Let's go off the record.

9 (Off the record.)

10 Q. (BY MR. BUDGE) John, do you have a
11 recollection of any debt that was being paid
12 through the trust other than this original Federal
13 Land Bank loan?

14 A. Well, I'm not sure what you mean by
15 debt. There were ongoing expenses.

16 Q. A debt meaning encumbrances against
17 the trust assets, not ongoing expenses like taxes
18 and the like.

19 A. I don't remember anything like that at
20 that time. You're talking at this time in '96?

21 Q. Yes. At the time that these trust tax
22 returns were being prepared and the money was
23 going through the trust.

24 A. I don't remember anything else.

25 Q. Okay. After this arrangement that you

1 Q. And during this time period that you
2 were trustee, were there any of the tax returns
3 that were sent on an annual basis to the
4 beneficiaries, either Beth or the residual
5 beneficiaries, Jerry, Doug and Dallas?

6 A. I don't remember sending them. If
7 Bruce sent some -- are you talking about the time
8 Bruce was preparing them?

9 Q. Yes.

10 A. I don't know if he sent any. I don't
11 remember sending any. Nor do I know if Max or
12 Monte sent any.

13 Q. Let's look at some of the leases. I
14 believe the files that you brought with you
15 contain some of the various lease files that
16 existed between the trust and Jerry Beus?

17 A. Correct.

18 Q. And documents pertaining to that.
19 Okay. Let's look at exhibit 3 first. These are
20 all copies of the lease that I think you provided
21 us earlier on in this proceeding. You'll
22 recognize that from your file exhibit 3 is the
23 first lease to Jerry, between Max Whittier as
24 personal representative of the trust and Jerry
25 Beus as lessee, the one in 1986?

1 talked about, after you consulted with Bruce Brown
2 and talked to Jerry and the decision was made that
3 it would be more efficient for Jerry to just pay
4 the trust expenses directly and pay the rent
5 directly to Beth, did you have -- do you have any
6 recollection of any money coming into you as
7 trustee or being paid out by you as trustee?

8 A. No.

9 Q. And would that be the explanation why
10 there would be no -- there were no tax returns
11 filed after that date?

12 A. Yes.

13 Q. And would that also be the reason you
14 didn't have any checkbook that you were
15 maintaining or any financial statements -- excuse
16 me, any accountings that were being provided
17 periodically?

18 A. Yes.

19 Q. So would it be accurate to say that in
20 sum, from whatever that exact date was, whether it
21 was 2000 or sometime in that time range, that you
22 were effectively turning over the responsibilities
23 for trust income and expense to Jerry to work out
24 directly with his mother Beth?

25 A. His stepmother. Yes.

1 A. I was just checking the date. That's
2 correct.

3 Q. And if you'll look at page two, the
4 top of it shows the rent at that time was 23,900
5 per year?

6 A. Correct.

7 Q. And if you look at the -- the reason
8 I'm pointing this out on the first lease, most all
9 of the terms of the first lease were identical in
10 the second lease and identical in the third lease.
11 And I have some questions on that later, but just
12 to point that out.

13 On this same 1986 farm lease, exhibit
14 3, on page two in the middle of the page you'll
15 note it reflects that the lessee, Jerry, is
16 supposed to maintain the irrigation equipment,
17 pumps, main lines, sprinkler heads, irrigation
18 equipment. Then the next paragraph says he's
19 supposed to furnish all of the fertilizers,
20 chemicals and the like. He's to remove some
21 rocks, maintain insurance and the like.

22 As I read that part of the lease, it
23 appears that under this initial lease Jerry paid
24 some rent and was responsible for all of the
25 operation and maintenance and expenses as

1 described in the lease?

2 A. Correct.

3 Q. If you look at the third page, the
4 expenses that the lessor had to pay, the third
5 paragraph, would simply be the taxes on the real
6 property?

7 A. The lessor, is that what you asked?

8 Q. Yes, the lessor. In other words, it
9 looks like under this lease the basic theme was
10 that Jerry would pay 23,900, pay all of the
11 operation and maintenance and expenses, and the
12 trust would pay the taxes?

13 A. The real property taxes, yes. That's
14 the language there.

15 Q. If you'll go over to page six, in the
16 third full paragraph you'll see a statement there
17 that says this lease shall not be construed to
18 deem to create or give rise to any partnership or
19 employee/employer relationship between the
20 parties.

21 Let me just ask you, did you ever
22 consider the relationship between you as trustee
23 and Jerry Beus, under this particular lease
24 agreement or the subsequent lease agreements, to
25 be anything different than a lessor/lessee

1 to the terms of the trust established by Lynn Beus
2 for and on behalf of his wife, Beth Beus.

3 I'll come back and ask you on the
4 lease you prepared, but that same language
5 appeared in all of the leases. You were aware of
6 that, I suppose?

7 A. Yes.

8 Q. And do you consider that language to
9 be consistent with the provisions of the will and
10 trust being referred to that simply said when Beth
11 dies the trust terminates if the boys can't get
12 along and we have to sell the property and divide
13 the proceeds?

14 A. Correct.

15 Q. Let's now look at exhibit 4. That
16 appears to be a simple addendum. You'll note that
17 that's the first time we see Monte Whittier show
18 up signing as successor trustee in 1994. It
19 appears that that simply was to extend an
20 additional seven years the terms under the prior
21 lease, exhibit 3?

22 A. Okay.

23 Q. And you'll note on that addendum that
24 in the last line the only change made, besides
25 extending the term, was the rent went up to 25,500

1 relationship?

2 A. No.

3 Q. You didn't ever consider that there
4 was a partnership between the trust and the
5 lessee, Jerry Beus?

6 A. No.

7 Q. Then there's a provision at the bottom
8 of page six in the very last paragraph that says
9 lessor shall have the right to terminate the lease
10 or to renegotiate the terms of the lease at the
11 end of the year. I'll represent to you, and point
12 out in later leases, that that same paragraph
13 shows up in the other leases.

14 My question is, during the period that
15 you were trustee of the trust did you ever attempt
16 to terminate the lease prior to the normal
17 expiration date shown on the face of each lease?

18 A. No.

19 Q. Now if you'll turn to page seven of
20 that same exhibit 3, the second full paragraph.
21 There's a paragraph contained here that is also in
22 all subsequent leases. I'll read that. Quote, it
23 is understood and agreed between the parties that
24 this lease is subject to the terms of the last
25 will and testament left by Lynn Beus and subject

1 from the 1986 lease, which was 23,400. Did you
2 have anything to do with that particular addendum
3 or change in the rent?

4 A. No, sir.

5 Q. Let's go to the next exhibit, number
6 5. I believe this particular lease, which is
7 dated January 1, 2007, would have been the first
8 lease that you signed as trustee of the trust?

9 A. Correct.

10 Q. Take just a moment -- at the bottom of
11 page two -- excuse me, the bottom of page one and
12 top of page two, there are three items that are
13 specific covenants, stipulations and agreements in
14 this lease. If you'll look at number one, the sum
15 of 12,000 to be paid to Beth Beus. So at this
16 point in time the rent was being paid directly to
17 Beth rather than through the trustee, consistent
18 with what you discussed earlier?

19 A. Correct.

20 Q. And item two is the taxes on the real
21 property of the trust. Does that mean that at
22 that point in time Jerry was expected to begin
23 paying the taxes directly?

24 A. I think it was a continuation of what
25 had been happening.

1 Q. If you'll look at the prior lease, it
2 said the lessor, the trust had been paying the
3 taxes. This is the first one I see that that
4 expense was being required to be paid by Jerry as
5 the lessee.

6 A. Okay.

7 Q. So I'm trying to identify the changes
8 made in this lease. The first one is the rent
9 went down and was paid directly to Beth. And
10 Jerry took over paying the taxes, correct?

11 A. Okay.

12 Q. And can you describe what the
13 circumstance were that led to these particular
14 changes, the rent being reduced and Jerry picking
15 up the taxes?

16 A. I don't have any memory of it exact,
17 other than a reflection, again, of what had been
18 happening. Just a recitation of the practical
19 side of what had been occurring.

20 Q. And by that you're saying Beth was
21 getting about 12,000 a year under the prior leases
22 when the expenses were run through the trust. And
23 even though this appears to be a reduction in the
24 rent, the net amount to her was about the same and
25 Jerry was paying the expenses?

1 A. Yes.

2 Q. Let's look at item three at the top of
3 page two. This is a new sentence that hadn't
4 appeared in the previous leases: Any and all
5 payments that may be done in the real property
6 annually.

7 A. I'm not sure what that means.

8 Q. When I asked -- you may or may not
9 recall this from your review of Jerry Beus's
10 deposition. Let me refer you to that and see if
11 you agree with what Jerry said. On page 95, line
12 17 of his deposition, I asked the question what
13 does that mean to you. His answer was, that means
14 if there was any other payments I should pay them
15 as part of the lease. And then -- I think I have
16 a copy.

17 A. I have it here.

18 Q. Okay. And if you look in Jerry Beus's
19 deposition on page 24, beginning on line three, I
20 posed the same question with him and his answer
21 was, I'm paying the 5,000 a month to DBL.
22 Apparently I was kind of beating a dead dog with
23 him, but on page 146, 147 and 148 we had some
24 further discussions about that. If you look on
25 page 146, line 15 and 16, and I was asking him why

1 he was making the DBL payments even though the
2 note and mortgage was signed by you as trustee.
3 He says, quote, I made them at the direction of
4 the trust as a part of my lease, yes. I asked him
5 further about it and on the top of page 147 Jerry
6 makes the statement, yeah, I believe there is a
7 thing in there that says, quote, any and all
8 payments that may be done in the real property
9 annually.

10 Further down I asked the question, so
11 you're saying what that means is the lease
12 requires you to make the DBL payments. Jerry goes
13 on to say yes. And he gives a similar answer on
14 page 48.

15 When I asked Jerry these questions,
16 was it your intent by that language in the lease
17 that you had to pay the real property payments,
18 that he was essentially obligated to pay the DBL
19 payments, and in fact had been paying the DBL
20 payments, would you have any reason to disagree
21 with what Jerry said about that?

22 A. My understanding was he was making the
23 DBL payments. That's my understanding.

24 Q. And Jerry felt he was obligated to
25 under paragraph three of the lease. Would you

1 agree with that?

2 A. Well, that's what he says. He and I
3 never talked about it specifically. I can't tell
4 you that he's said that to me. You're saying what
5 he said to you under oath in his deposition.

6 Q. He was basically saying that under the
7 lease agreement I'm supposed to pay these payments
8 against the real property. John, you drafted the
9 lease and put the language in there.

10 A. I understand that. But I think you're
11 trying to get me to confirm what his understanding
12 was. My understanding was that he was going to
13 make the DBL payment.

14 Q. And was your understanding based on
15 this paragraph three in the lease?

16 A. Well, I would say partially.

17 Q. If you'll look at the top of page two,
18 the same one we were looking at on this 2007 farm
19 lease, there's a paragraph there, the first full
20 paragraph, that does not appear in any of the
21 prior leases. It basically says that the lessee,
22 Jerry, would be compensated for any and all
23 improvements he makes to the leased premises.
24 Said compensation shall be paid to the lessee
25 herein at the time said improvements are made and

1 completed.

2 What were the circumstances that led
3 to that new paragraph being added in the 2007
4 lease, that Jerry would be paid if he made
5 improvements?

6 MR. SMITH: Object to the form of the
7 question. There was one other clause in that
8 sentence, as set forth in the terms of the trust.

9 THE WITNESS: Well, I think that Jerry had
10 or did or contemplated making additional
11 improvements on the ranch and wanted to have some
12 understanding that he could be compensated for
13 the improvements that he made.

14 Q. (BY MR. BUDGE) And if that were the
15 case and Jerry was paying all money directly to
16 Beth and paying all expenses directly, how would
17 the -- how would you as trustee be in a position
18 to pay him for improvements if you had no income
19 or rent?

20 A. Well, I think it was a contemplation
21 of what might happen in the future in terms of
22 what he may have done on the ranch.

23 Q. Okay. So the thought was that from
24 2007 on, if Jerry does something that improves the
25 ranch he would get some compensation for it?

Page 58

1 A. Yes.

2 Q. Has he ever submitted any claims to
3 you, that you know of, saying I made some
4 improvements after January 1, 2007 and I want to
5 be paid?

6 A. He's never made a formal claim.

7 Q. Turn to page three, if you would.
8 There seems to be a scribner's error or a conflict
9 regarding who is supposed to pay the taxes. Back
10 on page one it was pretty clear that under this
11 lease the taxes are being shifted to Jerry as the
12 lessee. In the third full paragraph you have a
13 sentence that says lessor is to pay the taxes. It
14 looks like that's the exact same language in the
15 exact same place as the prior leases, so I'm
16 assuming that when the word processing was done
17 that sentence inadvertantly got left in?

18 A. I think that's correct.

19 Q. And Jerry testified in his deposition,
20 I'll represent to you, that he is paying the taxes
21 and he understood it was his obligation. Did you
22 understand the same?

23 A. Yes, he paid the taxes.

24 Q. If you'll look over on page five there
25 are several paragraphs there that seem to me to be

1 identical to the prior leases. The same carries
2 over onto page six. If you'll look on page six,
3 the second full paragraph includes that identical
4 language we discussed earlier, that the lessor has
5 the right to terminate the lease at the end of the
6 year. And then two paragraphs below that is the
7 identical language that said this lease agreement
8 was also subject to the will and the terms of the
9 trust.

10 Was it your intent, in keeping those
11 same paragraphs in the 2007 lease that appeared in
12 the prior leases, to make sure that this lease was
13 entered into subject to the will and the trust?

14 A. I can't say that that was an exact
15 part of it. I think it was a continuation of what
16 had been done before. I'm sure that in the
17 compilation of the new lease that language was
18 included in this.

19 Q. Is there any question in your mind as
20 trustee that if the property is sold to permit the
21 division of the proceeds as the will directs, that
22 the lease would terminate at the same time to
23 facilitate that sale?

24 A. Well, no, I don't know that that was
25 part of the agreement. I mean, I don't recall

Page 60

1 that we had that specific conversation. But I
2 think what is here is what we agreed upon at that
3 time.

4 Q. Let's say a buyer comes forward and
5 offers a price that the boys agree upon. Under
6 this provision of the lease that says you have the
7 right to terminate it at the end of the year,
8 would you exercise that right and terminate in
9 order to permit the sale to go forward?

10 A. I think that's one of the fundamental
11 issues of the lawsuit, whether or not the lease
12 continues once the trust is terminated.

13 Q. I appreciate that that's a legal issue
14 to be decided. I'm not asking you to give a legal
15 opinion. As trustee, you drafted and signed the
16 lease agreement that gave you the right to
17 terminate the trust at the end of the year. The
18 same lease says that it is subject to the terms of
19 the will and the trust. And if you go back and
20 read the will and the testamentary trust it says
21 that if a death occurs, the trust terminates, the
22 parties are -- if they can't agree it's to be
23 listed and sold.

24 You've gone down that road as trustee
25 some distance, John, and listed the property for

1 sale. You're carrying out the terms that will
2 and contemplating the proceeds to be divided. The
3 question becomes, if Jerry says no, I think my
4 lease continues on, and Doug and Dallas say we
5 think it means that you have to terminate it when
6 the sale occurs, have you made a decision of what
7 you will do?

8 A. No, I haven't. I think there's some
9 other issues that are part of the litigation
10 concerning whether or not it's truly going to be
11 an exact one third, one third, one third. That's
12 another issue.

13 Q. How the proceeds are divided is an
14 issue?

15 A. Yes.

16 Q. So on those issues you are going to
17 basically seek and follow court direction on what
18 you should do with respect to the lease and the
19 disposition of the proceeds?

20 A. Yes. Unless there's an agreement
21 otherwise, if the parties agree to something and
22 there's some kind of stipulation.

23 MR. SMITH: Would this be a good time for a
24 break?

25 MR. BUDGE: Sure. Let's take five minutes.

1 (Recess.)

2 Q. (BY MR. BUDGE) Back on the record.
3 Would it be accurate to say that to your knowledge
4 there wasn't a period of time when the trust was
5 paying any of Jerry's personal operating expenses
6 as lessee of the property?

7 A. Correct.

8 Q. And there wasn't a time that you know
9 of that the trust was making any of the payments
0 on the various operating and term loans that he
1 had pertaining to his lease and operation of the
2 property?

3 A. Correct.

4 Q. I noted a provision in these leases
5 that said they could be subleased with the consent
6 of the trustee. Were you aware that the property
7 was subleased to Jerry's son Jade Beus in 2008?

8 A. I knew Jade was on the property. At
9 one point we talked about doing an actual lease.
0 It was my understanding that Jade did come down
1 and help some, but I don't know that he -- I don't
2 recall it ever being formalized, first. Number
3 two, if he did come, he came and helped his dad.
4 I don't remember an actual lease.

5 Q. During Jerry's deposition he indicated

1 that he had leased the farm land portion out, the
2 tillable land, this year, 2009, out to Leahy
3 Brothers for \$60,000 per year. Is that something
4 that you were aware of he was doing?

5 A. I'm aware of it now. I wasn't at the
6 time.

7 Q. Did he come to you and ask for consent
8 to do that?

9 A. No.

10 Q. So have you given him any verbal or
11 written consent for that sublease?

12 A. He's never asked for it. We have
13 discussed it and the terms and he's told me
14 generally what the provisions were. He advised me
15 that the cash rental amount would be enough to
16 make the payments. That's pretty much been the
17 extent of our conversations.

18 Q. Do you know how that \$60,000 price was
19 arrived at for purposes of the sublease?

20 A. I do not.

21 Q. I just took the tillable acres that
22 were shown on the appraisal of around 1200 and
23 divided into that figure and it looks like it's
24 roughly in the range of \$50 per acre. You don't
25 have any knowledge what the going price for the

1 lease of tillable land in that area is?

2 A. No.

3 Q. Does that cause you any concern or
4 pause as trustee of the trust to know that you're
5 leasing property out at 12,000 a year when the
6 market value might be as much as 60,000 a year?

7 A. Well, I guess to a certain extent I
8 didn't know. First, in talking with Jerry and
9 given the nature of what's going on with the
10 property, and the fact that this was entered into
11 early in the year, that the cash rent would be a
12 benefit to the trust rather than waiting and not
13 having anybody, or the uncertainty of him having
14 to run it with the differences of opinion in terms
15 of what is going on with the property.

16 Q. The 60,000 cash rent will benefit
17 Jerry, it wouldn't really benefit the trust, would
18 it?

19 A. I think it benefits the trust because
20 the farm is maintained and it's kept running and
21 the water is run on it. I think it does benefit
22 the trust.

23 Q. Okay. I suppose to the extent that
24 the \$60,000 would provide Jerry the 5,000 a month
25 or so he needs to make the mortgage payments,

1 correct?

2 A. Correct.

3 Q. Were there any conversations with
4 Dallas or with Doug pertaining to the sublease
5 this year of the farming operation?

6 A. Well, in general the farming operation
7 has been discussed specifically with Dallas. I
8 don't think Doug and I have had a conversation,
9 other than maybe -- well, I don't think so. When
10 Dallas was in the office with Jerry we talked
11 about the farming of the farm and what they were
12 going to do together and kind of their plan at
13 that time. From that point I've not had any
14 direct contact with Dallas.

15 Q. Have you been able to confirm whether
16 the real property taxes were in fact paid by Jerry
17 in 2008?

18 A. Yes.

19 Q. The second half being due June 20th,
20 2009?

21 A. They've been paid. I believe in that
22 box, wherever it is now, there's receipts.

23 Q. Let me shift to the rent payment
24 records that you might have or what knowledge you
25 may have concerning rent payments. I think we

Page 66

1 looked at exhibit 23 before. Page three of that
2 exhibit was a summary of Jerry's checkbook
3 register that showed rent payments that I believe
4 would have been paid directly to Beth during this
5 period of 2004 to 2007?

6 A. That's my understanding.

7 Q. Do you have any separate or
8 independent records that you maintained to keep
9 track of what rent payments Beth was receiving
10 during this period?

11 A. I have no records. I have memory of
12 talking with Beth about it. Jerry would indicate
13 to me that he had talked to her -- my
14 understanding was Jerry had an ongoing
15 relationship with Beth. He would stop and have
16 coffee with her and take her produce and things.
17 They would talk frequently.

18 Q. I think all I'm trying to get at is if
19 you were independently keeping records of rent
20 payments?

21 A. No.

22 Q. That was mostly between Beth and
23 Jerry?

24 A. Correct. But I would ask Jerry are
25 you up to date with Beth, have you paid her. In

1 our conversations that subject matter was
2 addressed.

3 Q. When it comes to the period of time
4 after Beth died in 2008, was it your understandin
5 that Jerry paid some rent to settle out with the
6 girls?

7 A. Yes.

8 Q. And I think you indicated to us
9 earlier, before we went on the record for you
10 deposition, that you were holding a check from
11 Jerry, which is for \$6,000, being the second half
12 of the rent for 2008?

13 A. Correct.

14 Q. And just for the record, what is the
15 date of that check and the check number?

16 A. It is dated 4/10/2009. The number is
17 1881.

18 Q. How did it come about that you got a
19 check in April of 2009 for rent due in 2008?

20 A. Other than Jerry brought it to my
21 office and said here's the balance of the rent.

22 Q. Okay. So he brought it to you
23 intending to pay the balance owing for 2008?

24 A. Correct. I would just indicate,
25 because the check is here, on the for portion at

Page 68

1 the bottom the check it indicates lease payment,
2 part. P-a-r-t, period, '08.

3 Q. Let's make a copy of that as exhibit
4 34. When Jerry brought that \$6,000 check to you
5 did he give you any directions concerning how it
6 should be disbursed?

7 A. Well, as he indicated earlier, and I
8 took it as a kind of facetious remark, but he said
9 share that for my fees. Of course that wasn't
10 done. In my opinion that was kind of in a joking
11 fashion. But he was doing that which he had said
12 he would do. Throughout this period, from, I'll
13 say, October to now, my conversations with Jerry
14 have been about have you done this, is this
15 current. For example, the payments, the lease --
16 I mean the taxes and this lease payment. So I
17 know that he was complying with what he said he
18 would do.

19 Q. As I looked at the entire leases they
20 had a date certain that the rent was due. It says
21 payable on November 1st of each year. When I get
22 to the new lease, exhibit 5, the 2007 lease that
23 you prepared, that's the first one I saw that
24 there wasn't a due date on the rent. Can you
25 explain why that is and when you intended Jerry to

1 have an obligation to pay the annual rent?
 2 A. Well, I didn't notice the date. That
 3 may have been an oversight. But he generally paid
 4 when he had income off of the crops. Whether he
 5 sold grain out of the field, whether he had stored
 6 some and the price was -- the way he explained it
 7 to me, he wanted to have the benefit of the best
 8 market available to sell. That was done usually
 9 toward the end of the year. It may have poured
 10 over into the next year, depending on how he
 11 arranged the sale of an asset.

12 Q. So with that in mind, then, for
 13 purposes of 2009 I guess you haven't received any
 14 rent payments from Jerry yet?

15 A. No.

16 Q. Is it your contemplation or belief
 17 that those payments would be due about the end of
 18 the year, whenever he gets his crops sold?

19 A. Correct. Yes.

20 Q. If the property can now be leased out
 21 at \$60,000 per year to Leahy Brothers, would it be
 22 your intent to consider exercising your right to
 23 terminate the lease at the end of the year in
 24 order to maximize that income to all
 25 beneficiaries?

1 A. Frankly I haven't given it any
 2 thought.

3 Q. I want to review some of the notes and
 4 mortgages with you that Jerry entered into. Let's
 5 look at exhibit 6 and 7. You'll note that these
 6 are both Ireland Bank promissory notes to Jerry
 7 pertaining to loans he had in -- exhibit 6 is
 8 2002. Exhibit 8 is a loan under the same date,
 9 June 7th, 2002. Do you see those notes, both
 10 signed by Jerry Beus?

11 A. Yes.

12 Q. And if you'll look at exhibit 8, that
 13 is the first time I've seen that the trust had
 14 signed a mortgage to secure Jerry Beus's loan from
 15 Ireland Bank. Do you see that?

16 A. Yes.

17 Q. Is that your signature at the bottom
 18 of the mortgage, exhibit 8?

19 A. It is.

20 Q. What were the circumstances that gave
 21 rise to you signing a mortgage of the trust
 22 property to secure the operating loans, or term
 23 loans, of Jerry Beus?

24 A. My recollection is that at the time
 25 Jerry wanted to do some improvements, continue to

1 make improvements to the property. He wanted to
 2 borrow, or have the ability to borrow, some money
 3 for the benefit of the property for that purpose.
 4 And to pay the operating loans off that he had.

5 The loans, if I remember correctly, were
 6 more than what the payoff on the mortgage -- the
 7 mortgage was more than the payoff on those loans.
 8 That's my recollection of the conversation.

9 Q. So you were trying to help Jerry be
 10 able to get his loans from Ireland Bank?

11 A. No. I was trying to help the entire
 12 property so that it could remain in effect with
 13 someone on the property and being run and continue
 14 the operation.

15 Q. Were you aware that Ireland Bank would
 16 not have continued to finance him in 2002 because
 17 of his growing debt load without a mortgage
 18 against the real estate?

19 A. I was aware of that. But, again --

20 Q. So when you said Jerry came to you for
 21 help and wanted to make some improvements, did he
 22 give you any specific plans for the improvements,
 23 cost estimates, a description of what they were?

24 A. He gave me general information.

25 Again, I don't know that it was Jerry coming to me

1 in terms of help. It was more in terms of him
 2 explaining the situation, see what the viable
 3 options were. He had made contact with
 4 prospective lenders. I did not talk to those
 5 people. I didn't arrange any of the loans. When
 6 he came to me I said let's see what we can do.

7 Jerry has always had a vision of that farm
 8 being better than it was when he started farming
 9 it. I'm not saying this to pump him up, I'm just
 10 saying that in our conversations he's always
 11 wanted to improve the water delivery system so as
 12 to have more acres irrigated. To have a better
 13 system by which the water could be delivered. I
 14 know at some time, and it may not be this time
 15 frame, but he has put in grain bins to store the
 16 grain. I'm not sure when that was done. He's
 17 wanted to do weed control, which is a requirement
 18 that he had under the lease. He did not give me
 19 specific numbers, but he did describe the kinds of
 20 things that he wanted to do to continue to improve
 21 the property.

22 Q. On exhibit 8, and we've been
 23 discussing this exhibit, that was a mortgage given
 24 by you as trustee on June 7th, 2002 to secure the
 25 \$372,740 note. Then, if you turn over to exhibit

1 10, you signed another mortgage on the same day,
2 which I assume would be in second position, to
3 secure a \$235,000 loan.

4 Were you aware that the loans being
5 secured, the first was a term out of his prior
6 operating loans; and the second one being security
7 for his new operating loan, was that your
8 understanding of why there were two mortgages?

9 A. That's my recollection.

10 Q. I'd like you to look at exhibit 27.
11 You recognize that as a title insurance policy in
12 favor of Ireland Bank that looks like it was
13 issued just a few days after the June 7th loan.
14 It is dated June 13th, 2002?

15 A. Yes.

16 Q. And if you look at that you'll see
17 that there are no encumbrances on the property
18 with the exception of the new mortgage that you
19 signed on behalf of the trust?

20 A. I can't find the exact entry.

21 Q. Well, do you see any other
22 encumbrances shown on schedule B of the title
23 policy other than the mortgages that were just put
24 on under date of June 7th, 2002 by you as trustee?

25 A. No.

1 Q. Now look at exhibit 29. You'll note
2 that's a quitclaim deed whereby Beth quitclaimed
3 her interest in the real property over to the
4 trust. That just preceded the closing of that
5 loan on May 30th, 2002.

6 A. I don't see that.

7 Q. Number 29.

8 A. I thought you said nine. I'm sorry.

9 Q. Do you have a recollection of having
10 some involvement with Ireland Bank that they
11 wouldn't make the loan unless the trust would put
12 up the mortgages, as you indicated, and that there
13 was a title issue because Beth's name was still on
14 half the property and that gave rise to the
15 recording of the quitclaim deed from Beth? Do you
16 have a recollection of that now?

17 A. I have -- I remember it generally.

18 Q. Do you recall having some discussions
19 with the bank that they needed -- the commitment
20 for title insurance reflected that Beth owned half
21 and the trust owned half, and they wanted to have
22 her sign a quitclaim deed so all of the land would
23 be in the trust's name, which then would enable
24 you as trustee to be able to sign the mortgages
25 and pledge the full property as security for

1 Jerry's loan.

2 A. I remember a conversation. I can't
3 tell you who I talked to. I remember that there
4 was an issue as to Beth and that there was
5 conversation with her. I don't know who talked to
6 her, but she agreed to sign the quitclaim deed.
7 That's what I remember.

8 Q. So was it your understanding that this
9 deed was needed by the bank to be able to clear up
10 title, if you will, and put it all in the trust's
11 name so they could then accept the mortgage from
12 the trust to secure Jerry's loan?

13 A. It was never expressed to me in those
14 terms. I mean, it was more of a collateral or
15 kind of a housekeeping thing. That's the way it
16 was categorized to me.

17 Q. Were you aware that on the commitment
18 Beth was shown to have individually owned a half
19 interest? Let's look at exhibit --

20 A. It may be 27, schedule A.

21 Q. I know it was in the file of -- okay.
22 You have a different one than I've got. That was
23 in exhibit 27?

24 A. Yes.

25 Q. If you'll look at schedule A, this was

1 the commitment dated May 21st of 2002 that
2 preceded the loan we've been discussing. It
3 reflects that the trust has a half interest in the
4 property. It's your understanding that the other
5 half interest remained in Beth's name?

6 A. No. I think we talked about that
7 earlier, that if -- that's simply not the case.
8 She didn't have any interest in the real estate.
9 For some reason it looks as if this was added. On
10 this document, if you look carefully on what I
11 call the printout portion, it looks someone typed
12 in her name and then Max Whittier as the trustee.

13 I think, in my opinion, there must have
14 been some concern on the part of the bank and
15 therefore they wanted to clean it up and that's
16 why they had her sign the deed. As far as I knew
17 Beth never had an interest in the real estate.

18 Q. We'll find the record. But assuming,
19 and I thought it was part of the exhibit, the
20 commitment that preceded this reflected in the
21 bank's file that Beth owned a half interest and
22 the trust owned a half interest. Mr. McBride, the
23 bank officer, testified that that's why they
24 required a quitclaim deed before they would loan
25 to the trust.

1 I'm not asking to you accept [redacted], but
 2 you don't have any knowledge or recollection of
 3 that line of discussions that you were involved in
 4 with Tom McBride from the bank and Beth Beus that
 5 gave rise to her signing and recording that
 6 quitclaim deed in order for the bank to make the
 7 loan to Jerry?

8 A. Not in those terms. I remember going
 9 to Soda Springs on an afternoon to be there to
 10 sign the mortgage. Beth was there. That's my
 11 specific memory.

12 Q. Okay. Let's turn to exhibit 11. You
 13 were aware that sometime later we had the loan
 14 that Jerry obtained from Ireland Bank. And as
 15 trustee you signed the trust mortgages to secure
 16 payment of it. Do you recall later any
 17 communications, by letter or otherwise, from
 18 Ireland Bank regarding defaults on their loan and
 19 they wanted to be paid off and otherwise were
 20 going to foreclose? Did any of that come to you
 21 as trustee?

22 A. I don't recall documentation, but I do
 23 remember a conversation about that.

24 Q. And that would have been sometime
 25 before the DBL note was signed, exhibit 11?

1 A. Right.

2 Q. You had some communication from
 3 Ireland Bank. And let me back up a little. The
 4 June 2002 loan was in place?

5 A. Right.

6 Q. When you look at the documents here,
 7 the DBL loan paid that off in 2007, and we'll get
 8 to those documents in a moment. But sometime in
 9 between 2002 and 2007 something must have been
 10 ongoing that Ireland Bank chose not to finance
 11 Jerry any longer. I was assuming, since the trust
 12 had signed the mortgage, that they may have had
 13 some communication with you that the loan was in
 14 default and that they were considering foreclosing
 15 or it needed to be refinanced. Tell me what you
 16 can recall.

17 A. I recall knowing about it. I don't
 18 recall any correspondence. It may be that I've
 19 just not seen it when I went through the
 20 documents. I don't remember anything in writing.
 21 I know that Ireland Bank had some concern and
 22 wanted to be paid off.

23 Q. Is it possible you had a conversation
 24 with Jerry that the bank was no longer going to
 25 finance him and he had to find new financing?

1 A. Well, in the [redacted] terms. And Jerry was
 2 trying to find new financing.

3 Q. Let's look at these next documents.
 4 Exhibit 11 is a promissory note, which appears to
 5 be the first time I see a promissory note signed
 6 by you as trustee to DBL. Exhibit 12 is the
 7 settlement statement pertaining to the closing on
 8 that loan, which occurred at Caribou Title.
 9 Exhibit 13 is the mortgage that secured the note.
 10 Exhibit 14 appears to be a letter from you where
 11 you gave instructions to Caribou Title to pay out
 12 any excess cash to Jerry.

13 Let's start with exhibit 11, the
 14 \$427,500 note that you signed as trustee to DBL
 15 Company. How did that particular loan and note
 16 come about?

17 A. I didn't have any conversation with
 18 DBL directly that I can remember. My
 19 understanding was Jerry had indicated that there
 20 was a need to get some new financing. He wanted
 21 to see what kind of lenders were out there. He
 22 was trying different methods. It's my
 23 understanding that he -- I don't know. I can't
 24 tell when this was. But apparently he had a
 25 conversation -- I'm not sure if it was with both

1 Doug and Dallas, but at least one of the brothers
 2 in terms of whether or not they would agree to
 3 sign on some kind of financing documents in order
 4 to get a better interest rate, if I recall right.
 5 But that wasn't done, or wasn't available. They
 6 indicated that they weren't interested in doing
 7 that. So Jerry went out and found a lender.
 8 Apparently this -- he may have talked to me, but
 9 this was the company that was going to do the
 10 loan.

11 Q. So it was Jerry that was out locating
 12 refinancing, not you as trustee?

13 A. Correct.

14 Q. He's the one that had the contacts and
 15 lined up DBL?

16 A. Yes.

17 Q. How did it come about that you signed
 18 the note and mortgage?

19 A. Again, we discussed the situation,
 20 discussed what was going to be best for the
 21 property and the operation in general. There was
 22 a decision made that it was reasonable to consider
 23 doing a loan such as this that could be serviced
 24 by the ranch rather than there being a
 25 foreclosure.

1 Q. Was there any question in your mind
2 that this was an obligation that Jerry had to pay?

3 A. Well, I think it was subject to what
4 the funds were used for. I think that's part of
5 this litigation.

6 Q. Did the trust receive any of the money
7 from the prior Ireland Bank notes or did the money
8 on the notes all go to Jerry, as far as you know?

9 A. They went to Jerry for the operation
10 of the farm.

11 Q. And isn't it correct that this DBL
12 note, exhibit 11, was refinancing the Ireland Bank
13 loan of Jerry's?

14 A. A portion. It's my understanding that
15 there was more money borrowed, unless my numbers
16 are wrong.

17 Q. Let's look at exhibit 12. That is the
18 closing statement. If you look on line 202 it
19 shows a new loan to DBL of 427,500. That's the
20 same amount as on the face of the promissory note,
21 exhibit 11, correct?

22 A. Right.

23 Q. If you look at line 104 it shows that
24 of that amount, \$332,141.66 went to Ireland Bank,
25 correct?

1 A. Correct.

2 Q. And that was to pay off the Ireland
3 Bank notes and mortgage balance at that time,
4 correct?

5 A. Okay.

6 Q. And there's some rather high
7 settlement charges. Line 103 shows \$77,204.50 in
8 settlement charges. When you go to page two to
9 understand what is contained in that number,
10 you'll see that there was a loan origination fee
11 paid of some \$21,375. Do you know who got that
12 origination fee?

13 A. I don't.

14 Q. And also it shows prepaid interest of
15 52,500. Do you know who that went to?

16 A. No. It didn't go to the trust, I know
17 that.

18 Q. You assume it went to DBL?

19 A. Most likely.

20 Q. And if you go back to the first page
21 it shows cash to the borrower, on the bottom line,
22 line 303, \$18,153.84?

23 A. Right.

24 Q. So that's the new money you were
25 talking about that went to Jerry?

1 A. Correct. I think that's the reason
2 for that handwritten note, to have that money go
3 to him.

4 Q. So if I understand this correctly, and
5 correct me if I'm wrong because you were signing
6 the notes and mortgage and you signed this closing
7 statement, what we were doing is essentially
8 refinancing Jerry's seven percent loan with a new
9 loan at DBL at 14 percent. And of that 427,500,
10 there was \$18,153.84 new money, correct?

11 A. Right.

12 Q. And that went directly to Jerry?

13 A. Correct.

14 Q. And your letter, exhibit 14, was sent
15 to them as trustee to authorize the payment of
16 that excess to Jerry?

17 A. Right.

18 Q. Let's look at exhibit 15. That was
19 obtained from Caribou Title to reflect the balance
20 owing on this DBL loan, exhibit 11, as of April
21 14th, 2009. You'll see there on the bottom right,
22 principal balance they show \$438,376 as being the
23 balance owed, correct?

24 A. Correct.

25 Q. So in the little more than two years

1 since that loan has been in place, there's been
2 not only no reduction in the principal, there's
3 been an increase in the principal balance. Does
4 that cause you any concern as trustee that you may
5 be putting the trust real property at risk?

6 A. Well, I don't think there's an
7 overriding concern because I think there's been
8 performance by Jerry. The payments have been
9 made. I think there's sufficient value in the
10 property. I don't think they're undersecured. I
11 think the lender has plenty of security. I think
12 it has preserved the asset for the estate for the
13 beneficiaries.

14 Q. We talked earlier about, at least at
15 one time back in 2002 and prior, you had land that
16 had no debt at all after the Federal Land Bank
17 mortgage was paid off. In the ensuing period we
18 now have an asset that my clients, Doug and
19 Dallas, have an interest in and are concerned
20 about that went from being debt free to having a
21 mortgage against it of over \$400,000, and which
22 seems to be increasing in amount rather than
23 decreasing. Would that give you concern as
24 trustee in protecting their interests in having it
25 operated by Jerry, who at least it seems is doing

1 pretty well because he pays rent to you of 12,000
2 and he picks up 60,000 from the Leahy sublease?

3 A. My position would be that the other
4 heirs' position is protected. If it's determined,
5 and I think this is an issue as far as the
6 litigation, but in terms of that loan who is
7 responsible for it, and let's say Jerry is, their
8 interest is still protected for the value of the
9 balance of the farm.

0 You know, I understand what you're saying
1 here in terms of numbers, but I think that at the
2 time this was done there was a concerted effort to
3 continue to keep the property together, to keep it
4 functioning. I think the bottom line, at least
5 the way it was expressed to me historically, was
6 to keep the farm in the family. If there was
7 going to be a difference, at some point the heirs
8 would be able to resolve it. Maybe that's too
9 simplistic.

0 Q. Jerry got all of the money from all of
1 the loans so far, right? From Ireland and DBL, no
2 question all of the money went to Jerry?

3 A. That's correct.

4 Q. And that was all part of payment of
5 his operating expenses, correct?

1 A. Well, my understanding is that that
2 money was used for other purposes, not just for
3 operating.

4 Q. Well, he has an obligation under the
5 lease to pay all operating expenses?

6 A. That's correct.

7 Q. And the trust never received the
8 money, the trust never made any payments to
9 Ireland Bank, correct?

0 A. Right.

1 Q. And they never made any payments to
2 DBL, correct?

3 A. Correct.

4 Q. Is there any question in your mind as
5 trustee that that obligation owed to DBL is owed
6 by Jerry, and that you as trustee simply were
7 signing the note and the mortgage as an
8 accommodation to him to enable him to continue to
9 finance and stay in possession?

0 A. I wouldn't characterize it that way.
1 I think ultimately that's a decision for the trier
2 of fact to make in this case. I don't think
3 that's my position to decide.

4 Q. As trustee, John, you signed the note.
5 I think it's a fair question to ask. Regardless

1 of what the court may determine as a matter of
2 law, do you consider that to be an obligation that
3 you imposed upon the trust and its assets as
4 trustee or do you consider that to be Jerry's
5 debt?

6 MR. SMITH: Objection. Asked and answered.
7 Go ahead.

8 THE WITNESS: I don't think it's that clear
9 cut. I don't think it's one way or the other.

10 Q. (BY MR. BUDGE) So you don't know?

11 A. I'm not saying I don't know. I'm just
12 saying I'm not going to express an opinion because
13 I think ultimately the trier of fact will have to
14 decide. For example, if there are offsets against
15 the loan in some way and there's some division
16 other than all of the loan going to be Jerry's
17 obligation, I can't make that determination.

18 Q. I don't mean to be argumentative.

19 A. You are.

20 Q. It seems to me like if you're going to
21 be in the capacity of wearing a hat as trustee of
22 the trust and you make a decision to sign a note
23 for 427,500 that has a relatively huge finder fee
24 and prepaid interest and lots of penalty
25 provisions and bears interest of 14 percent, it

1 would seem that you would have in mind whose
2 obligation is that. Is that yours as trustee of
3 the trust or is that Jerry who gets the money and
4 makes the payments?

5 A. I think the issue is not necessarily
6 who is going to make the payments on that loan.
7 It's clear that Jerry was going to make the
8 payments. It's whether or not in the assessment
9 of the asset, the farm, and what debt may be on it
10 and how much of that debt is owed by Jerry, and
11 reference to the other issues concerning the farm,
12 I think that's where my goal is. I'm not able to
13 answer your question the way you want me to.

14 Q. There's an issue that has come up with
15 respect to the number of irrigated acres. I think
16 you're generally familiar with that. And the
17 water rights, which is exhibit 17, and a map
18 reflecting the place of use as exhibit 18,
19 identify 484 acres as being irrigated land for
20 which there is water rights. Jerry has indicated
21 that that number is about 757 acres that he
22 irrigates, according to his opinion. And the
23 appraisal had a higher number, 836 acres. That
24 kind of gives rise to an unresolved issue on
25 irrigated acres.

1 Have you as trustee undertaken
2 anything with Jerry or with Water Resources or
3 otherwise to resolve that acreage disparity?

4 A. The only thing that I know is that --
5 I know there was a disparity. You raised it in
6 prior correspondence to Jerry. I think one of the
7 things that Jerry has done is he's attempted to
8 get another appraisal, which has just been
9 received recently, to see how that reflects upon
10 the calculation of the acreage in the original
11 appraisal. So I think to the extent that there's
12 a new appraisal and whether or not that can be --

13 Q. Let me go back to the question. I was
14 just wondering, as trustee of the trust have you
15 undertaken any effort, or do you plan on
16 undertaking any effort, to figure out exactly how
17 many acres are being irrigated as compared to what
18 the right shows?

19 A. No, not at this point.

20 Q. Okay. Have you done any kind of
21 analysis or comparison of the types of crops that
22 are raised, the crop rotation practices, and the
23 going rental value for that particular property
24 under the current market?

25 A. No. Is there a time frame of when

Page 90

1 that might have been done? I mean, are you saying
2 now, today, or earlier?

3 Q. At any time?

4 A. Well, my analysis has been primarily
5 through Jerry and what he's represented to me.
6 And phone calls I've made to talk to those who
7 have been giving him that information. Jerry and
8 I will talk about what he was going to grow, where
9 he was going to grow it, and what he expected.
10 Based on that there would be some checking in
11 terms of that. But primarily it's been done
12 orally with those he talked to or was going to
13 talk to.

14 Q. So you've talked to Jerry about what
15 the going rental rate is. Have you talked to any
16 of the other farmers in that area, or any
17 appraisers, to try and get an idea of what the
18 going rental value might be on cultivated or
19 noncultivated land?

20 A. The only time that it has been rented
21 that I'm aware of is this year. I found out after
22 the fact. So in prior years there was no need to
23 check because he was running it. If Jade helped
24 some, and I'm not sure how that relationship
25 worked. I knew he was on the farm helping some.

1 But at other times I don't know that there was a
2 need because he was running it. He had the
3 equipment, he had the knowledge.

4 Q. In 2007, which is the only lease you
5 signed when the rent was 12,000, that rent was not
6 established based upon any appraisal or analysis,
7 it was more or less what Beth needed and was
8 willing to accept and what Jerry was willing to
9 pay, correct?

10 A. I think it was what was feasible given
11 the income from the farm as well.

12 Q. What do you base that statement on?

13 A. I think generally there was not a lot
14 of excess money every year. In some years there
15 was a loss.

16 Q. What do you base that conclusion on?
17 Did you ever do any analysis of Jerry's personal
18 tax returns?

19 A. No. But, again, Jerry would
20 communicate and tell me what was going on,
21 multiple times during the year of what was going
22 on. You're just asking me, at least as I view it,
23 a general question in terms of that assessment and
24 there was no specific analysis done.

25 Q. That's all I'm asking. Your sole

Page 92

1 source of information is what Jerry thought would
2 work for him and work for Beth?

3 A. Well, yeah.

4 MR. BUDGE: Let's go off the record.

5 (Recess.)

6 (Exhibits 35, 36, 37, 38 marked.)

7 Q. (BY MR. BUDGE) Just a couple more
8 questions. I wanted to have you identify some
9 letters that represent correspondence back and
10 forth.

11 We've marked exhibit 35, which is an
12 October 20th, 2008 letter to you from myself,
13 Randy Budge. Exhibit 38 is a reply letter you
14 sent under date of April 3rd, 2009 to myself and
15 Clyde Nelson.

16 Let's start again. Exhibit 36 is
17 another letter from me to you dated January 13th,
18 2009. Exhibit 37 is your April 3rd, 2009 response
19 to myself and Clyde Nelson. And exhibit 38 is
20 another letter under date of May 18th, 2009 from
21 me to you. Do you recognize those as part of the
22 correspondence that has been back and forth
23 between us?

24 A. Yes, sir.

25 Q. Looking at exhibit 35, there was a

1 request made in that letter, October 1, 2008,
2 for you as trustee to go ahead and distribute the
3 real property out to the three residual
4 beneficiaries, Jerry, Doug and Dallas. That
5 request wasn't performed by you, correct?

6 A. Well, there was no agreement for it to
7 be done. This is a result of a meeting we had
8 here in your office in this room where these
9 issues were discussed. There was no agreement to
10 do that. We talked about options. This was
11 something that was proposed, as I understand it,
12 as a possible resolution of this. And the letter
13 dated January 13th is a follow up on this
14 memorandum of understanding.

15 There was no consensus, though, as I
16 understood it. Jerry did not agree to it. At
17 that time he either then, or sometime after that,
18 retained private counsel. At the time we met I
19 wasn't representing Jerry and couldn't and didn't.
20 So, you know, there wasn't an agreement.

21 Q. In the January 13th, 2009 letter to
22 you, exhibit 36, you'll note in the second
23 paragraph, on behalf of Doug and Dallas I'm
24 stating that there's no agreement reached. The
25 parties are at an impasse and demand is made that

1 you proceed and list the property for sale. Would
2 this have been the first time that you would have
3 been aware that Doug and Dallas wanted the
4 property listed for sale because they hadn't
5 reached agreement with Jerry?

6 A. Well, it was before and after there
7 had been some conversation. Then the other letter
8 that you have here, dated April 3rd, indicates
9 that there was something different. So, you know,
10 there was -- it's just not a static matter.

11 Q. Let's look at the next letter, the
12 April 3rd, 2009 letter, exhibit 37, that you
13 wrote. On the bottom of page two, under your
14 number one, you say, as trustee I agree I have the
15 duty to sell the property. You make that
16 statement, I suppose, based upon what the trust
17 says you are required to do?

18 A. Yes.

19 Q. And then at the top of page three,
20 under item number four, you make the statement,
21 the extension and improvement of the main line
22 needs to be completed. There are funds available
23 that need to be spent this spring. What are you
24 referring to there on the extension and
25 improvement of the main line needs to be

1 completed?

2 A. I think Jerry had disclosed that at
3 some time in the past he had negotiated, and I
4 can't remember all the details, but there was some
5 money available to extend that main line. If he
6 requested that during a certain time frame they
7 would pay for the work and materials to do that.
8 That was something that was discussed as an issue
9 to do in the spring, because if not then he would
10 have to pay seven or nine grand or something. I
11 don't remember the amount.

12 Q. But what is being referred to as money
13 available, not that the trust had money available
14 or Jerry, but maybe some government funding to
15 help finance more of the pipeline?

16 A. Yes.

17 Q. And then at the bottom on number 37,
18 your April 3rd, 2009 letter, you conclude in the
19 last sentence that I plan to sublease the farm to
20 farmers in the area and Jerry can oversee the
21 property to get the farm work done. What were you
22 referring to when you said you planned to sublease
23 it?

24 A. Well, it was my understanding that
25 there wasn't an agreement between Jerry, and

1 Dallas in particular, because this is about the
2 same time that he came to my office with Jerry.
3 He was going to farm it. He was going to stay
4 living in Soda and be out on the farm. They
5 talked about multiple specific details in terms of
6 what he was going to do to help farm the place.
7 He was going to be hands on.

8 This was simply referring to the fact that
9 they themselves were not going to agree. So the
10 plan was if a sublease needed to be considered,
11 and that was my purpose was simply to propose if
12 they're not going to agree then let's get someone
13 else on board. This was early enough in the
14 season for that to be considered.

15 Q. So when you say I plan to sublease,
16 meaning what you just described here, that if they
17 couldn't come up with some agreement among
18 themselves that you would sublease to somebody
19 else?

20 A. Yeah. I don't think you can let it
21 lay open all summer.

22 Q. So how do we get from the point that
23 you were going to sublease it out to where Jerry
24 subleased it out without your knowledge or
25 consent?

1 A. Jerry and I really never talked about
2 that at that point because at some point he had
3 his own counsel. Our conversations became
4 different from what they had been before. With
5 Mr. Smith's approval, I've continued to talk to
6 Jerry generally about the farm, but we had not
7 talked about these neighbors at that particular
8 time.

9 MR. BUDGE: Okay. Let's take five. I
10 think I'm done. I'll check my notes and see if I
11 missed anything.

12 (Recess.)

13 MR. BUDGE: Back on the record. I am done.

14 EXAMINATION

15 BY MR. SMITH:

16 Q. Mr. Souza, my name is Steve Smith.
17 I'm the attorney for Jerry Beus. I just first
18 want to start with some follow-up questions to
19 your background information. Have you ever had
20 any disciplinary action taken against you?

21 A. Yes.

22 Q. Okay. What was that?

23 A. I had a suspension from the Idaho
24 State Bar in 2006.

25 Q. Okay. For how long?

1 single meeting, I don't think that's correct. I
2 know that there were conversations over a period
3 of time as to whether or not it was necessary to
4 keep doing it. At some point, and again I can't
5 tell you when, but an agreement was reached to not
6 do it anymore.

7 Q. Okay. Who took part in the
8 conversations over a period of time? Was it just
9 you, Mr. Brown, Mr. Beus, Beth? Who all was
10 involved?

11 A. I think all of us were involved at
12 certain times, but not all together. It wasn't
13 like a particular meeting.

14 Q. Okay. But at the end of these
15 conversations it was decided that -- let me start
16 over. At the end of these conversations what was
17 the ultimate decision?

18 A. To basically run everything through
19 Jerry's account and to use his tax return as a
20 basis for the money that came into the trust.
21 There wasn't any separate accounting system for
22 the trust.

23 Q. Was the trust abolished at this time?

24 A. No. The trust has never been
25 abolished.

1 A. Six months.

2 Q. And what was that for?

3 A. It's a long history. Fundamentally
4 because of missing the statute of limitations in a
5 statute of limitations case.

6 Q. Okay. You currently carry insurance?

7 A. I do.

8 Q. And who is that with?

9 A. I don't remember the carrier, but the
10 agency handling it is in Boise. I don't remember
11 their name either.

12 Q. Is it a standard Idaho State Bar
13 insurance or something else?

14 A. Whatever they offered. It's not ALPS,
15 I know that.

16 Q. Okay. I want to go back to Mr. Budge
17 asking you a number of questions regarding a
18 meeting with Bruce Brown where apparently it was
19 decided that money and tax returns and things of
20 that nature would no longer be run through the
21 trust. Do you remember that conversation?

22 A. I remember the questions, yes.

23 Q. Okay. Can you give me an idea of when
24 approximately this meeting took place?

25 A. No. If it was characterized as a

1 Q. Now, I know Mr. Budge asked you a
2 number of questions about tax returns. I'm not
3 sure, and forgive me if this was asked, but is it
4 correct that no tax returns for the trust have
5 been filed since 2001?

6 A. Yes.

7 Q. Okay. And that the reason for that is
8 because a decision was reached to run everything
9 from the trust through Jerry's personal or farm
10 operation tax returns?

11 A. There was no income to the trust.

12 Q. Okay. And Mr. Brown was part of this
13 decision, right?

14 A. To my understanding, Bruce was
15 consulted. I remember talking to him. Again, I
16 can't tell you when.

17 Q. I guess maybe a more obvious question
18 is who made the ultimate decision to do this? You
19 as trustee or Jerry or Mr. Brown or somebody else?

20 A. I think it really was a collective
21 decision.

22 Q. Mr. Budge asked you a number of
23 questions about the DBL note. I think I heard you
24 say that you had never talked to DBL or any of its
25 representatives; is that correct?

1 A. I don't recall talking to any of them.
 2 I mean, maybe there was somebody that called and
 3 said this note is ready or it was sent to me or
 4 something, but I don't have any memory of being
 5 involved in the negotiation of the terms of the
 6 note or contacting them in that fashion. And
 7 again -- well, I just don't remember anything.

8 Q. Where did the signing of the note, the
 9 mortgage, and the other materials take place?

10 A. I don't recall it being done in a
 11 title company. It may have been done through the
 12 mail. I don't think there was a closing agent.

13 Q. Who is Blaine Lemmon? Do you
 14 recognize that name?

15 A. I don't know that name.

16 Q. Okay. Prior to the signing of the
 17 promissory note -- is that exhibit 11?

18 A. The note is exhibit 11, yes.

19 Q. Okay. Let me ask a couple of
 20 foundational questions. It's my understanding
 21 that you don't know where DBL Company came from?

22 A. That's correct.

23 Q. Okay. Are you aware or familiar with
 24 Signature Financial Services?

25 A. That does not sound familiar.

1 Q. Okay. I believe you testified that
 2 there were conversations that Ireland Bank needed
 3 to be refinanced. Doug and Dallas and Jerry
 4 couldn't reach an agreement on some other form of
 5 loan and then suddenly DBL appears. Is that an
 6 accurate reflection of what you recall?

7 A. It's either that or DBL may have been
 8 an option that was discussed. My memory is the
 9 catch point was whether or not this loan or a
 10 different loan could be obtained if there were
 11 different -- more signators on the note. That's
 12 what sticks in my mind. Jerry would have talked
 13 to the brothers to see if they would consider -- I
 14 don't know who he talked to, but my understanding
 15 is he talked to them and advised them of what he
 16 contemplated doing. There was a negative response
 17 and that's what I remember.

18 Q. Okay. Do you recall whether or not
 19 you read exhibit 11 before you signed it?

20 A. Well, I don't remember exactly when it
 21 was done, but I remember reading it.

22 Q. Okay. So you don't recall whether you
 23 read it before you signed it or some other time?

24 A. I'm just saying I don't remember
 25 how -- again, I don't remember whether it was in

1 the mail, how that came to me first. It was
 2 presented at some point for me to read.

3 Q. Do you recall if Beth Beus was
 4 involved in these conversations?

5 A. I don't remember talking to Beth
 6 specifically about that loan. I think that,
 7 again, in talking with Jerry at different times
 8 she was aware of his financial circumstances and
 9 something had to be done.

10 Q. Exhibit 12 is the settlement, the HUD
 11 statement, I believe. Yes, the closing statement.
 12 Do you recall reading this prior to the time you
 13 signed the acknowledgment?

14 A. I remember looking at it.

15 Q. I'm sorry?

16 A. I remember looking at it.

17 Q. Okay. Did it occur to you at the time
 18 you looked at it that the settlement charges were
 19 rather generous to the lender?

20 A. Well, I remember some conversation,
 21 but at that point I don't know that there were --
 22 there was no other lender out there. This was an
 23 opportunity to keep the ranch going and that was
 24 the conversation.

25 Q. Okay. Now, exhibit 12 indicates that

1 settlement, or the closing, took place at Caribou
 2 Title. Do you recall going to Caribou Title and
 3 signing all of these documents?

4 A. You know, I don't. I remember Ireland
 5 Bank, being to the bank and signing those. I
 6 could just be forgetting, but I don't remember
 7 physically going there.

8 Q. Exhibit 13 is the mortgage. Did you
 9 read that before you signed it?

10 A. My memory is that I would have looked
 11 at all of these documents.

12 Q. Have you at any time, to your
 13 recollection sitting here today, talked to anyone
 14 at DBL?

15 A. I don't recall talking to anybody
 16 about the negotiation of the loan itself. I may
 17 have talked to them as far as the mechanics of
 18 getting it done or needing copies, but I don't
 19 remember --

20 Q. Do you recall if DBL ever asked for
 21 any details of the trust itself, such as details
 22 about you as trustee or any information about the
 23 actual trust?

24 A. I don't remember that through me.
 25 Maybe Jerry requested something, but I don't

1 recall any direct request from OBL to me.

2 Q. Now, I believe you said that your
3 practice is primarily criminal defense and this
4 was either your first or only work as a trustee;
5 is that correct?

6 A. I think what I said is now my practice
7 is primarily criminal defense work. At different
8 times, you know, there's been an emphasis in
9 different areas. Now that's the case. I have not
10 been a trustee before.

11 Q. Have you been a trustee since?

12 A. No.

13 Q. During the period of time after you
14 became the trustee did you take any CLEs about the
15 duties of a trustee?

16 A. I don't remember a particular CLE on
17 that subject. It may have been something in the
18 context of CLEs with multiple subjects, but I
19 don't recall specifically.

20 Q. At any time after becoming the trustee
21 did you go read the Idaho statute about the duties
22 of a trustee?

23 A. I can't remember a particular time,
24 but on different occasions I've looked at the
25 statute.

1 Q. Okay. When exhibit 12, the deed note,
2 was entered into, did you sit down with Jerry and
3 explain the ramifications of the terms contained
4 in the note?

5 A. I don't recall when the conversations
6 took place. We certainly talked about the note,
7 but I don't know that it was done at the time of
8 signing. I don't recall the physical
9 circumstances of how that happened.

10 Q. I think you said you didn't have any
11 discussions with the other two beneficiaries. Was
12 there any discussion with the three of the
13 brothers together about this particular note?

14 A. Jerry represented to me that he had
15 conversations with one or both of them about
16 signing on the note, discussing the note and see
17 if they would sign on it.

18 Q. What about this particular note?

19 A. That's the note I'm talking about. My
20 understanding was that this note, or a lender
21 similar to this that wanted additional collateral,
22 or different signators, additional signators.

23 Q. Now, the property has been listed. I
24 believe you testified that there have been no
25 offers. Has the realtor indicated whether there

1 has been any interest whatsoever in the property
2 short of an offer?

3 A. When it was originally listed, during
4 the negotiations she had indicated to me that she
5 had spoken to different people that might have
6 prospective buyers. But given the addendum and
7 the conditions, I'm not aware of any offer made
8 since that was done.

9 Q. Okay. Are you aware of any interest
10 expressed?

11 A. She's not called me as trustee to
12 discuss that. I think, again, my counsel may have
13 talked to her more recently. I'm not trying to
14 make him -- well, I've not talked to her recently.

15 MR. HOLMES: I can update you on the
16 conversation I had yesterday when we're done.

17 MR. SMITH: Okay. Thanks.

18 Q. (BY MR. SMITH) As trustee, have you
19 done any analysis or study of the value of the
20 physical improvements made to the property by
21 Jerry Beus?

22 A. I have not directly. I've been
23 involved in conversations with Jerry and prior
24 counsel to get that information to him and Mr.
25 Nelson when Mr. Nelson represented Jerry. I was

1 present when they talked about it, about getting
2 that information together, but I've not seen the
3 results of that.

4 Q. Okay. The same question as to the
5 value of any sweat equity or personal work put
6 into the property by Jerry Beus, have you done
7 that?

8 A. I haven't done any analysis. I'm
9 aware generally of what he's done because I've
10 been on the property.

11 Q. And what have you seen?

12 A. Well, it looks like, you know, a farm
13 ranch property that is -- an effort has been made
14 to improve it and make it as functional as
15 possible, given where it is location wise and the
16 types of crops that can be grown. And what
17 decisions have been made as to what to do on it.

18 The farm itself has kind of evolved from a
19 much less sophisticated operation. I think he's
20 made a considered effort, in my opinion, to
21 enhance it by trying to improve the irrigation
22 system, whether it be what is irrigated, what
23 isn't, and the delivery of the water. Those
24 things that I mentioned before. Keeping the weel
25 down to keep the animals out of it. It's kind of

1 evolved from more of a low key dry in to
2 something more feasible as far as irrigating
3 ground and being able to grow enough to run it.

4 At one point other crops were grown. I
5 know he's tried alfalfa and other cash crops to
6 feed the sheep he had, but now it's primarily
7 grain.

8 MR. SMITH: Give me a second. I may not
9 have any other questions. (Pause.) I think
10 that's all I have. Thank you.

EXAMINATION

12 BY MR. HOLMES:

13 Q. John, when you and Mr. Budge were kind
14 of dancing around and arguing about whether or not
15 the trust had received any benefit from the DBL
16 note, I want to focus on that a little bit. The
17 trust received no money from that loan, correct?

18 A. That's correct.

19 Q. As far as whether the trust received a
20 benefit, let me ask you a hypothetical question.
21 If Jerry took the \$18,000 and change of excess
22 money out of that DBL closing and made
23 improvements to the property under the terms of
24 the June 1st, 2007 lease, which indicates that he
25 would be reimbursed for those improvements, would

1 you consider that something that would benefit the
2 trust?

3 A. Yes. If the improvements were made,
4 yes.

5 Q. To your knowledge have any
6 improvements been made since the 2007 lease went
7 into effect?

8 A. I can't state with specificity any
9 particular improvements. I don't know.

10 Q. And when Mr. Smith asked you about a
1 listing of improvements that were made through the
2 years, is that something that we collectively are
3 expecting Jerry Beus to come up with or are you
4 coming up with that list?

5 A. Well, my understanding is, in
6 conversations that I've had with Jerry and prior
7 counsel, and even with Mr. Budge, Jerry would be
8 the person that would know that. He has the
9 knowledge and would have access to the records
0 that might reflect what was done. It's my
1 understanding that it would come from him.

2 Q. And do you recall how long we've been
3 waiting for that?

4 A. Well, I think we first started back in
5 October to talk about it in general terms. And

1 then more recently the last couple of months.

2 Q. Do you recall when the trust ground
3 was originally mortgaged to secure the Ireland
4 Bank refinance, were there discussions with Beth
5 at that time about doing that?

6 A. There were. I don't recall if I
7 talked to her directly, but I think that's the
8 time she signed the quitclaim deed, so she was
9 involved in making that title cleaned up, I guess.

10 Q. Let me make sure. You didn't have
11 discussions specifically with her, but you think
12 Jerry did?

13 A. I'm sure Jerry did. My memory is she
14 was at the bank when that was signed, so she knew
15 it was coming on at that time.

16 Q. And were you there with her?

17 A. I remember seeing her that day, I do.
18 I remember sitting in the lobby waiting.

19 Q. Now, when the 2007 lease was signed
20 was there any specific discussions by you with
21 Jerry about the provisions on the termination of
22 the lease, whether it would continue on beyond
23 Beth's death, anything like that?

24 A. No.

25 Q. And so is it safe to say that the

1 provisions of that lease are in your mind a legal
2 decision for a court to make in interpreting that
3 lease and the prior leases that had the same
4 language in them?

5 A. Yes.

6 Q. You've brought today a check number
7 1881 from Jerry made payable to the trust for
8 \$6,000, dated April 10th, 2009. You've been
9 specifically instructed by Mr. Budge in a letter
10 to you not to make any disbursement of that until
11 there's a mutual agreement on how that is to be
12 handled; is that correct?

13 A. That's correct.

14 MR. HOLMES: I don't have any other
15 questions.

16 MR. BUDGE: I'm done.

17 MR. SMITH: I'm done too.

18 MR. BUDGE: Thank you.

19 (Exhibit 34 marked.)

20 (Deposition concluded at 1:10 p.m.)

21 (Signature requested.)

22

23

24

25

REPORTER'S CERTIFICATE

I, Rodney Felshaw, CSR No. SRT-99,
Certified Shorthand Reporter, certify:

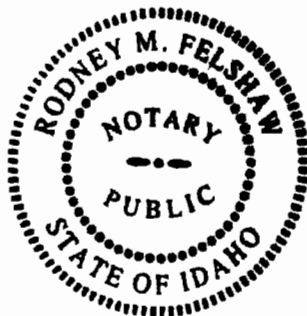
That the foregoing proceedings were taken
before me at the time and place therein set forth,
at which time the witness was put under oath by
me.

That the testimony and all objections made
were recorded stenographically by me and
transcribed by me or under my direction.

That the foregoing is a true and correct
record of all testimony given, to the best of my
ability.

I further certify that I am not a relative
or employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 27th day of August, 2009.



Rodney Felshaw

Rodney Felshaw, CSR NO. SRT-99

Notary Public

Brigham City, UT 84302

My commission expires: March 31, 2015

A				
ability 71:2	51:16,23 2:2	ALPS 98:14	April 19 83:20	37:24 38:3 44:7
able 26:4 30:1	107:6	amend 32:17	92:14,18 94:8,12	51:5 62:16 63:4,5
65:15 71:10 74:24	additional 43:20	amount 8:13 23:15	95:18 112:8	71:15,19 73:4
75:9 85:18 88:12	51:20 57:10	23:18 24:14,15,17	area 8:9 27:18 64:1	75:17 77:13 90:21
109:3	106:21,22	28:15 31:4 44:14	90:16 95:20	94:3 101:23 103:8
abolished 99:23,25	address 4:23	53:24 63:15 81:20	areas 105:9	107:7,9 108:9
above-entitled 2:8	addressed 67:2	81:24 84:22 95:11	arguing 109:14	a.m 2:4
absolutely 40:19	administered 35:22	analysis 89:21 90:4	argumentative	
accept 75:11 77:1	37:5	91:6,17,24 107:19	87:18	
91:8	administering	108:8	Arizona 7:25 8:2	B 73:22
acceptable 7:5	34:24	animals 108:25	arrange 72:5	back 8:1 14:1 17:6
access 110:19	administration	annual 23:12 44:18	arranged 69:11	21:13 26:8 30:3
accommodation	19:4	44:22 47:3 69:1	arrangement 15:8	37:9 38:9 42:13
86:18	advised 63:14	annually 44:14	15:10 43:5 45:25	51:3 58:9 60:19
accompanying	102:15	54:6 55:9	arrived 63:19	62:2 78:3 82:20
41:16	affect 32:8	answer 39:22 54:13	asked 42:23 49:7	84:15 89:13 92:9
account 41:24	afternoon 77:9	54:20 55:13 88:13	54:8,12 55:4,10	92:22 97:13 98:16
43:19 99:19	age 4:23	answered 87:6	55:15 63:12 87:6	110:24
accounting 43:20	agency 98:10	anybody 64:13	100:1,3,22 104:20	background 7:21
99:21	agent 101:12	104:15	110:10	97:19
accountings 46:16	ago 9:20 27:9	anymore 99:6	asking 40:3 54:25	Bailey 2:3,11
accumulate 23:10	agree 21:2 25:19	anyway 16:10	60:14 77:1 91:22	balance 23:11
accumulated 6:24	26:4,13,19 27:10	32:10	91:25 98:17	44:24 67:21,23
accurate 10:11	36:11,12 37:15,19	apparently 54:22	asserted 35:15	82:3 83:19,22,23
22:10 29:10,19	39:14 54:11 56:1	79:24 80:8 98:18	assessment 88:8	84:3 85:9
42:23 46:19 62:3	60:5,22 61:21	appear 41:21 56:20	91:23	bank 44:13 45:13
102:6	80:2 93:16 94:14	APPEARANCES	asset 35:2 69:11	70:6,15 71:10,15
acknowledgment	96:9,12	2:9	84:12,18 88:9	73:12 74:10,19
103:13	agreed 23:12 50:23	appeared 51:5 54:4	assets 22:18 24:24	75:9 76:14,23
acquaintance 10:23	60:2 75:6	59:11	45:17 87:3	77:4,6,14,18 78:3
18:20	agreement 23:14,21	appears 18:16	assign 37:1	78:10,21,24 81:7
acquainted 9:13,22	26:11 27:22 28:2	20:21 41:19 42:20	association 12:18	81:12,24 82:3
12:10,15 17:12,15	30:21 31:12 32:12	44:10 45:4 48:23	assume 73:2 82:18	84:16 86:9 102:2
acre 63:24	32:22 33:18 34:2	51:16,19 53:23	assuming 58:16	104:5,5 111:4,14
acreage 31:4 89:3	34:6 35:21,25	79:4,10 102:5	76:18 78:11	bank's 76:21
89:10	36:3,14,20 49:24	apply 37:4	attempt 36:5 50:15	BANNOCK 1:3
acres 33:15 63:21	56:7 59:7,25	appointed 39:20	attempted 89:7	Bar 8:18 97:24
72:12 88:15,19,21	60:16 61:20 93:6	appointment 41:1	attorney 4:11,13	98:12
88:23,25 89:17	93:9,20,24 94:5	appraisal 30:25	6:1 97:17	base 91:12,16
acted 34:23 35:17	95:25 96:17 99:5	31:14,19,22 32:7	August 1:17 2:5	based 16:10 21:1
acting 9:1 39:17	102:4 112:11	32:21 63:22 88:23	authorize 83:15	31:14 39:13 56:14
action 34:18 97:20	agreements 24:8	89:8,11,12 91:6	authorized 38:14	90:10 91:6 94:16
actual 40:11 62:19	49:24 52:13	appraisers 90:17	available 7:6 31:15	basic 49:9
62:24 104:23	ahead 28:11 87:7	appreciate 60:13	38:23 69:8 80:5	basically 6:15
add 41:3	93:2	appropriate 28:18	94:22 95:5,13,13	13:16 23:4 24:21
added 57:3 76:9	alecky 33:2	approval 97:5	aware 17:11 20:6,9	25:17 28:4 40:7
addendum 28:20	alfalfa 109:5	approximately	26:3,10,19 27:3	42:7 56:6,21
	alive 12:22 20:3	19:23 98:24	31:21 33:9,10	61:17 99:18

basis 35:8 47:3
 99:20
bears 87:25
beating 54:22
becoming 43:17
 105:20
began 11:13,25
 16:7
beginning 54:19
begun 11:15
behalf 2:2 4:9 51:2
 73:19 93:23
belief 69:16
believe 9:14 13:13
 18:9 33:23 38:12
 47:14 52:6 55:6
 65:21 66:3 102:1
 103:11 105:2
 106:24
beneficiaries 37:14
 47:4,5 69:25
 84:13 93:4 106:11
beneficiary 20:2
 36:24,25 44:3
benefit 22:20 64:12
 64:16,17,21 69:7
 71:3 109:15,20
 110:1
benefits 64:19
best 35:14 69:7
 80:20
Beth 9:19 10:23
 11:10,15 15:2,6
 15:12 18:14 20:2
 22:7 23:4,6,10
 24:13 25:3 34:11
 34:15,17 35:1,3,9
 35:14 40:16 41:25
 44:2 46:5,24 47:4
 51:2,10 52:15,17
 53:9,20 57:16
 66:4,9,12,15,22
 66:25 67:4 74:2
 74:15,20 75:4,18
 76:17,21 77:4,10
 91:7 92:2 99:9
 103:3,5 111:4
Beth's 16:8 17:19

21:8 22:2 29:12
 29:23 74:13 76:5
 111:23
better 72:8,12 80:4
Beus 1:5,6,10,11
 2:15,24,25 4:12
 5:15,15,15 8:25
 9:14,19,23 10:24
 11:15 12:7,8,16
 15:6,17,18 16:23
 17:13 18:14 19:5
 20:2,7,19 21:3
 24:3,4 31:22 32:4
 34:8,11,17 35:1,1
 36:6 44:1,2 47:16
 47:25 49:23 50:5
 50:25 51:1,2
 52:15 62:17 70:10
 70:23 77:4 97:17
 99:9 103:3 107:21
 108:6 110:13
Beus's 15:22 34:4
 54:9,18 70:14
beyond 111:22
billed 14:8
billings 14:2
bills 14:9,12,21,22
 15:15 42:25
binder 7:14
bins 72:15
birth 4:23,25 5:1
bit 109:16
Blaine 101:13
board 96:13
Boise 2:19 8:3
 19:21 98:10
book 13:20
borrow 71:2,2
borrowed 81:15
borrower 82:21
bottom 20:23 24:20
 25:16 34:14 36:3
 39:2 50:7 52:10
 52:11 68:1 70:17
 82:21 83:21 85:14
 94:13 95:17
boundaries 35:25
box 2:13,18,22 6:9

65:22
boys 26:3 29:14,17
 29:23 30:1,4
 51:11 60:5
break 38:24 61:24
brief 6:10
broke 30:18
brothers 32:12,20
 63:3 69:21 80:1
 102:13 106:13
brought 6:7,9,12
 13:13,14 16:15
 32:4 47:14 67:20
 67:22 68:4 112:6
Brown 3:9 37:21,24
 38:12,13 43:16
 44:7 46:1 98:18
 99:9 100:12,19
Brown's 41:17
Bruce 3:9 37:21,24
 38:11,13 43:16
 44:7 46:1 47:7,8
 98:18 100:14
Budge 2:3,11,12
 3:4 4:5,8,21 38:5
 42:16,17 45:8,10
 57:14 61:25 62:2
 87:10 92:4,7,13
 97:9,13 98:16
 100:1,22 109:13
 110:17 112:9,16
 112:18
business 4:23 16:25
buy 25:9 33:9
buyer 60:4
buyers 29:8 107:6
B2 24:20

C

C 1:9 2:12,17
calculation 89:10
California 8:7
call 9:24 11:11
 16:10,14 17:5,6
 18:10 76:11
called 101:2 107:11
calls 90:6
capacity 14:20

87:21
capsule 7:20
carefully 5:23
 76:10
Caribou 15:25 16:3
 40:20 79:8,11
 83:19 104:1,2
carrier 98:9
carries 59:1
carry 98:6
carrying 61:1
case 1:8 7:9 57:15
 76:7 86:22 98:5
 105:9
cases 19:9
cash 63:15 64:11,16
 79:12 82:21 109:5
catch 102:9
categorize 6:13
categorized 14:14
 75:16
cause 4:3 64:3 84:4
ceased 39:15
Center 2:4
certain 25:8 30:14
 64:7 68:20 95:6
 99:12
certainly 16:25
 26:9 106:6
Certified 2:6
change 32:7,23
 43:14 51:24 52:3
 109:21
changed 16:23 17:1
 42:1 43:7
changes 53:7,14
characterize 30:22
 35:6 86:20
characterized
 98:25
charges 82:7,8
 103:18
CHARTERED
 2:11
check 3:10 14:13
 16:17 40:24 45:4
 67:10,15,15,19,25
 68:1,4 90:23

97:10 112:6
checkbook 13:25
 15:22 41:20 42:24
 46:14 66:2
checking 11:7 48:1
 90:10
checks 13:5,25
 14:13 15:1 41:25
 44:12
chemicals 48:20
children 18:12
 25:18
chose 78:10
circumstance 43:13
 53:13
circumstances 57:2
 70:20 103:8 106:9
City 26:24 27:23
 32:9
civil 5:9 8:14
claim 58:6
claims 58:2
clarify 42:17
clause 57:7
CLE 105:16
clean 76:15
cleaned 111:9
clear 42:10 58:10
 75:9 87:8 88:7
clerked 8:3
CLEs 105:14,18
client 10:1
clients 84:18
close 24:23
closing 74:4 79:7
 81:18 83:6 101:12
 103:11 104:1
 109:22
Clyde 92:15,19
coffee 66:16
collateral 9:11
 75:14 106:21
collaterally 9:9
collective 100:20
collectively 110:12
come 10:2 12:18
 19:14 22:12 23:6
 24:12 29:20 40:13

42:2 51:3 62:20 62:23 63:7 67:18 77:20 79:16 80:17 88:14 96:17 110:13,21 comes 7:8,15 60:4 67:3 comfortable 17:2 coming 23:2 41:23 44:12 46:6 71:25 110:14 111:15 commencing 2:4 commitment 74:19 75:17 76:1,20 commonly 24:2 communicate 91:20 communication 28:24 78:2,13 communications 77:17 company 79:15 80:9 101:11,21 compared 89:17 comparison 89:21 compensated 56:22 57:12 compensation 56:24 57:25 compilation 59:17 complaint 6:5 completed 57:1 94:22 95:1 complying 68:17 concern 36:15 64:3 76:14 78:21 84:4 84:7,23 concerned 84:19 concerning 6:18 61:10 65:25 68:5 88:11 concerns 6:22 concerted 85:12 conclude 95:18 concluded 112:20 conclusion 91:16 concur 37:18 condition 28:18 31:8	conditions 28:20 29:4 33:20,23 107:7 confirm 42:22 56:11 65:15 conflict 17:10 20:10 36:15 58:8 conjunction 5:9 11:3 19:4 consensus 30:14 32:15 43:15,21,25 93:15 consent 28:5 40:12 62:15 63:7,11 96:25 conservation 31:7 consider 34:24 49:22 50:3 51:8 69:22 80:22 87:2 87:4 102:13 110:1 considerable 8:13 28:24 considered 35:17 96:10,14 108:20 considering 78:14 consistent 36:9 37:11,16 51:9 52:17 construed 49:17 consult 6:1 consulted 46:1 100:15 contact 10:5 30:6 65:14 72:3 contacting 101:6 contacts 80:14 contain 47:15 contained 36:10 50:21 82:9 106:3 containers 16:11,13 16:14 contemplated 57:10 102:16 contemplating 61:2 contemplation 57:20 69:16 context 11:7 105:18 continuation 52:24	59:15 continue 41:11 70:25 71:13 72:20 85:13 86:18 111:22 continued 26:5,11 32:14 71:16 97:5 continues 60:12 61:4 continuing 24:18 41:8 continuously 18:24 control 72:17 conversation 10:4 17:23 26:17 28:15 28:24 33:24 60:1 65:8 71:8 75:2,5 77:23 78:23 79:17 79:25 94:7 98:21 103:20,24 107:16 conversations 33:11,16 63:17 65:3 67:1 68:13 72:10 97:3 99:2,8 99:15,16 102:2 103:4 106:5,15 107:23 110:16 copies 5:13,17 6:21 7:1 21:9 47:20 104:18 copy 3:10 21:12 25:11,18 31:24 32:4 38:11,22 40:18 41:19 54:16 68:3 cordial 17:9 Corps 7:25 correct 10:13 14:10 16:4 18:11 19:13 22:4,16 23:5 24:5 24:6 25:7 26:24 26:25 27:5 31:16 31:17,20 39:3 40:9 42:8,16 43:3 43:7 47:17 48:2,6 49:2 51:14 52:9 52:19 53:10 58:18 62:7,13 65:1,2	66:24 67:13,24 69:19 80:13 81:11 81:21,25 82:1,4 83:1,5,10,13,23 83:24 85:23,25 86:6,9,12,13 91:9 93:5 99:1 100:4 100:25 101:22 105:5 109:17,18 112:12,13 correctly 71:5 83:4 correspondence 78:18 89:6 92:9 92:22 cost 71:23 counsel 3:15 4:14 7:6,13 20:4,8 21:8 28:6 29:18 30:4 32:3 33:24 38:23 93:18 97:3 107:12 107:24 110:17 County 1:3 40:20 couple 13:10 16:19 42:13 92:7 101:19 111:1 course 7:16 20:1 68:9 court 1:1 41:7 61:17 87:1 112:2 covenants 52:13 CPA 3:9 38:11 create 49:18 created 36:14,23 Credit 41:19 44:17 criminal 5:10 8:13 8:15 105:3,7 crop 89:22 crops 69:4,18 89:21 108:16 109:4,5 cultivated 90:18 current 6:15,19 8:12,20 9:1 14:5 68:15 89:24 currently 32:8 98:6 cut 87:9 CV-09-1822-OC 1:8 C.S.R 1:20	D D 3:1 dad 39:23,23 62:23 Dallas 1:5 5:15 12:9 17:12,22,24 18:8 21:8 25:6,23 26:10 28:5 30:10 33:4 40:19 47:5 61:4 65:4,7,10,14 80:1 84:19 93:4 93:23 94:3 96:1 102:3 dancing 109:14 date 4:23,25 5:1,14 7:7 10:21 11:12 11:14 13:12 16:7 21:12 23:19,21 46:11,20 48:1 50:17 66:25 67:15 68:20,24 69:2 70:8 73:24 92:14 92:20 dated 20:21 31:19 34:3 36:7 52:7 67:16 73:14 76:1 92:17 93:13 94:8 112:8 dates 19:8 daughters 18:14 day 18:5,5 30:14 73:1 111:17 days 73:13 DBL 16:2 54:21 55:1,12,18,19,23 56:13 77:25 78:7 79:6,14,18 80:15 81:11,19 82:18 83:9,20 85:21 86:12,15 100:23 100:24 101:21 102:5,7 104:14,20 105:1 109:15,22 dead 54:22 dealing 22:14 dealings 20:1 death 16:8 17:19 18:24,25 19:3 21:8 24:21,22
---	---	--	---	--

25:4,21 26:2
 27:15 29:12,24
 34:4 60:21 111:23
debt 45:11,15,16
 71:17 84:16,20
 87:5 88:9,10
debts 21:21 36:24
decide 32:20 86:23
 87:14
decided 28:10
 60:14 98:19 99:15
decision 27:6 46:2
 61:6 80:22 86:21
 87:22 99:17 100:8
 100:13,18,21
 112:2
decisions 108:17
decreasing 84:23
deed 74:2,15,22
 75:6,9 76:16,24
 77:6 106:1 111:8
deem 49:18
default 78:14
defaults 77:18
defendant 4:10,12
Defendants 1:12
defense 8:14,15
 105:3,7
delivered 72:13
delivery 72:11
 108:23
demand 93:25
depending 69:10
deposition 1:16 2:1
 4:7 5:3,12,17,22
 6:2 7:11,16 13:3
 13:22 15:1 54:10
 54:12,19 56:5
 58:19 62:25 67:10
 112:20
depositions 5:14,18
deposits 41:21
describe 8:11 16:22
 53:12 72:19
described 49:1
 96:16
describing 31:10
description 71:23

desires 36:1
detail 7:5 30:23
 31:9
details 30:18 95:4
 96:5 104:21,21
determination
 87:17
determine 87:1
determined 85:4
dialog 28:25 29:12
 29:16
dialogue 30:17
died 21:14 67:4
dies 51:11
difference 85:17
differences 30:2
 64:14
different 6:14 19:9
 23:8 28:8 49:25
 75:22 79:22 94:9
 97:4 102:10,11
 103:7 105:7,9,24
 106:22 107:5
difficult 33:22
difficulties 33:13
direct 65:14 105:1
direction 55:3
 61:17
directions 68:5
directive 28:13
 32:25
directly 14:9,22
 15:6,12,19 19:12
 29:13 38:18 40:4
 42:5 46:4,5,24
 52:16,23 53:9
 57:15,16 66:4
 79:18 83:12
 107:22 111:7
directs 59:21
disagree 55:20
disburse 43:22
disbursed 68:6
disbursement
 112:10
disciplinary 97:20
disclosed 29:8 31:6
 95:2

discretion 37:14
discuss 17:3 107:12
discussed 13:22
 27:9 37:18 52:18
 59:4 63:13 65:7
 80:19,20 93:9
 95:8 102:8
discusses 21:13
discussing 16:7
 41:14 72:23 76:2
 106:16
discussion 106:12
discussions 29:13
 54:24 74:18 77:3
 106:11 111:4,11
 111:20
disparity 89:3,5
disposition 61:19
dispute 14:4 31:2
distance 60:25
distribute 93:2
distributed 24:25
DISTRICT 1:1,2
divide 25:22 51:12
divided 27:11 61:2
 61:13 63:23
division 25:20
 37:15 59:21 87:15
document 28:23
 34:21,25 35:7,24
 76:10
documentation
 77:22
documents 6:16 7:1
 7:12 11:13 16:6,8
 16:15 18:17 20:19
 26:23 29:6 40:15
 40:20 41:17 47:18
 78:6,8,20 79:3
 80:3 104:3,11
dog 54:22
doing 10:7 12:23
 14:15,20 28:4
 62:19 63:4 68:11
 80:6,23 83:7
 84:25 99:4 102:16
 111:5
Doug 1:6 2:24 5:15

12:5 13:22,24
 18:8 21:9 25:6,23
 26:10 28:5 30:13
 33:4 40:18 47:5
 61:4 65:4,8 80:1
 84:18 93:4,23
 94:3 102:3
drafted 56:8 60:15
dry 109:1
due 19:17 65:19
 67:19 68:20,24
 69:17
dug 21:10
duly 4:2
duplicative 43:17
duties 105:15,21
duty 94:15

E
E 3:1
earlier 15:15 16:7
 23:21 37:18 47:21
 52:18 59:4 67:9
 68:7 76:7 84:14
 90:2
early 24:11 33:16
 38:13 64:11 96:13
easement 31:7
East 2:3
educational 7:21
effect 13:5 35:24
 71:12 110:7
effectively 46:22
efficient 46:3
effort 43:17 85:12
 89:15,16 108:13
 108:20
Ehres 27:23 33:12
eight 19:25 25:15
 34:14
either 11:7 18:5
 23:9 32:14,25
 47:4 93:17 98:11
 102:7 105:4
emphasis 105:8
employee/employ...
 49:19
enable 74:23 86:18

encountered 33:13
encumber 37:1
encumbrances
 45:16 73:17,22
enhance 108:21
ENNIS 2:16
ensuing 84:17
entered 34:6 59:13
 64:10 70:4 106:2
entire 35:18 68:19
 71:11
entirely 37:11
entitled 34:16
entry 73:20
enumerate 29:1
equally 25:23
equipment 48:16
 48:18 91:3
equity 108:5
error 58:8
escrow 16:2
essence 28:7
essentially 14:9
 22:18 25:4 29:19
 55:18 83:7
establish 11:14
established 51:1
 91:6
establishes 39:15
estate 10:11,15 12:1
 13:3,15,16 16:8
 16:18 19:5 20:13
 21:15 22:13 26:24
 28:17 34:8 35:10
 35:16 36:23 37:2
 37:14 71:18 76:8
 76:17 84:12
estimates 71:23
evaluate 35:21
event 26:6 28:23
evidencing 41:1
evolved 108:18
 109:1
exact 10:21 33:21
 44:4 46:20 53:16
 58:14,15 59:14
 61:11 73:20
exactly 19:8 23:17

89:16 102:20 Examination 3:4,5 3:6 4:20 97:14 109:11 example 40:16 68:15 87:14 exception 73:18 excess 79:12 83:16 91:14 109:21 exchange 30:3 exchanged 6:17 excuse 14:12 18:13 32:6 46:15 52:11 exercise 60:8 exercising 69:22 exhibit 13:20 14:24 15:16,22 20:19 27:21 30:21 31:18 34:1 35:21 38:8 38:10,22 41:3,14 47:19,22 48:13 50:20 51:15,21 52:5 66:1,2 68:3 68:22 70:5,7,8,12 70:18 72:22,23,25 73:10 74:1 75:19 75:23 76:19 77:12 77:25 79:4,6,9,10 79:13 81:12,17,21 83:14,18,20 88:17 88:18 92:11,13,16 92:18,19,25 93:22 94:12 101:17,18 102:19 103:10,25 104:8 106:1 112:19 exhibits 3:8,15 5:17 92:6 existed 21:21 44:25 47:16 expectation 29:24 expected 52:22 90:9 expecting 110:13 expenditures 41:21 expense 42:3 46:23 53:4 expenses 15:5,11,13 23:3,10,23 25:24	41:23 45:15,17 46:4 48:25 49:4 49:11 53:22,25 57:16 62:5 85:25 86:5 experience 9:1,1,7 expiration 50:17 explain 10:23 68:25 106:3 explained 69:6 explaining 72:2 explanation 46:9 express 87:12 expressed 75:13 85:15 107:10 extend 51:19 95:5 extending 51:25 extension 94:21,24 extent 12:20 22:23 31:10 42:10 63:17 64:7,23 89:11 extreme 28:15 extremely 33:22 F face 17:19,19,25,25 50:17 81:20 facetious 68:8 facilitate 59:23 fact 15:17 26:3 39:15 55:19 64:10 65:16 86:22 87:13 90:22 96:8 facts 30:24 fair 32:16 86:25 fall 26:9 Falls 19:20 familiar 9:19 88:16 101:23,25 family 8:25 17:20 85:16 far 27:16 33:19 76:16 81:8 85:5 85:21 104:17 109:2,19 farm 22:25 24:3 31:2 41:18 43:19 44:17 48:13 56:18	63:1 64:20 65:11 72:7 81:10 85:9 85:16 88:9,11 90:25 91:11 95:19 95:21 96:3,4,6 97:6 100:9 108:12 108:18 109:1 farmers 90:16 95:20 farming 65:5,6,11 72:8 fashion 68:11 101:6 father 19:15 father's 27:15 favor 73:12 feasible 91:10 109:2 Federal 44:13 45:12 84:16 fee 82:10,12 87:23 feed 109:6 feel 7:18 41:14 fees 14:15 15:11 68:9 Fellows 31:15,19 Felshaw 1:20 2:5 felt 29:7 55:24 fertilizers 48:19 fewer 33:20 field 69:5 fifty 15:24 figure 63:23 89:16 file 3:9 9:10 13:11 13:15 16:14 37:21 38:4,11,21,22 39:21 40:23,24 41:17 47:22 75:21 76:21 filed 28:12 39:3 46:11 100:5 files 6:5,25 7:5 21:1 21:10 47:14,15 filing 28:23 finally 29:23 finance 71:16 78:10 78:25 86:19 95:15 financial 16:12 46:15 101:24	103:8 financing 78:25 79:2,20 80:3 find 39:11 44:12 73:20 76:18 78:25 79:2 finder 87:23 firm 6:6 19:17 41:8 first 4:2 9:22 12:8 12:15 13:23 14:2 16:7 17:15,18 18:13,19,19 21:5 21:9 22:1 25:8,9 30:4 33:17 34:13 39:8 47:19,23 48:8,9 51:17 52:7 53:3,8 56:19 62:22 64:8 68:23 70:13 73:5 79:5 82:20 94:2 97:17 103:1 105:4 110:24 five 58:24 61:25 97:9 focus 109:16 follow 30:5 36:5 61:17 93:13 followed 35:24 40:4 following 25:20 26:2 29:12 follows 4:3 follow-up 97:18 foreclose 77:20 foreclosing 78:14 foreclosure 80:25 forgetting 104:6 forgive 100:3 form 4:16 57:6 102:4 formal 40:11,14,25 41:6 58:6 formality 41:10 formalized 62:22 forms 28:8 forth 25:1 26:8 30:3 36:6 37:2 57:8 92:10,22 forty-nine 15:24	forward 7:22 27:7 32:13 60:4,9 found 6:24 21:10 80:7 90:21 foundational 101:20 four 25:10,16 94:20 frame 72:15 89:25 95:6 Frankly 70:1 free 7:18 41:15 84:20 frequently 66:17 front 5:19 fulfill 27:8 fulfilling 28:13,14 full 49:16 50:20 56:19 58:12 59:3 74:25 functional 108:14 functioning 85:14 fundamental 30:24 60:10 Fundamentally 98:3 funding 95:14 funds 41:22 42:2 43:6,24 81:4 94:22 funeral 18:2,5 furnish 48:19 further 54:24 55:5 55:10 future 57:21 G G 1:10 8:24 15:18 20:19 34:8 36:5 Gate 26:24 27:23 32:9 general 7:2 33:20 65:6 71:24 80:21 91:23 110:25 generally 8:11 27:19 33:22 63:14 69:3 74:17 88:16 91:13 97:6 108:9 generous 103:19
--	--	---	--	--

getting 53:21
 104:18 108:1
gifts 22:7,8
girls 67:6
give 6:10 7:20 29:3
 49:18 60:14 68:5
 71:22 72:18 84:23
 98:23 109:8
given 28:13 63:10
 64:9 70:1 72:23
 91:10 107:6
 108:15
gives 55:13 88:24
giving 90:7
go 17:8 18:4 20:18
 25:5 28:10 30:12
 32:13 38:5,9
 40:22 43:21 45:2
 45:8 49:15 52:5
 60:9,19 81:8 82:8
 82:16,20 83:2
 87:7 89:13 92:4
 93:2 98:16 105:21
goal 88:12
goes 55:12
going 7:4 9:12 13:9
 17:8 19:25 23:22
 26:4,11,19 28:25
 29:1,17,22 30:12
 31:1,9 32:13
 39:24 40:17 45:23
 56:12 61:10,16
 63:25 64:9,15
 65:12 77:8,20
 78:24 80:9,20
 85:17 87:12,16,20
 88:6,7 89:23 90:8
 90:9,12,15,18
 91:20,21 96:3,3,6
 96:7,9,12,23
 103:23 104:2,7
good 8:18 23:20
 61:23
government 95:14
graduate 8:5
graduated 7:23 8:2
grain 69:5 72:15,16
 109:7

grand 95:1
grantor 34:8
ground 109:3 111:2
grow 90:8,9 109:3
growing 71:17
grown 108:16
 109:4
guess 6:14 9:9
 19:25 22:22 28:7
 43:21 64:7 69:13
 100:17 111:9

H

half 35:3,3 65:19
 67:11 74:14,20,21
 75:18 76:3,5,21
 76:22
handing 38:10
handle 19:6 35:20
handled 12:24 19:7
 21:17 36:8 112:12
handling 43:5
 98:10
hands 12:19 96:7
handwritten 83:2
happen 40:17 57:21
happened 42:7,11
 43:10,14 106:9
happening 52:25
 53:18
hard 25:17
hat 87:21
HAWLEY 2:16,16
heads 48:17
health 19:18,22
heard 100:23
heirs 33:1 85:4,17
held 22:18
hello 12:19
help 13:12 19:8
 62:21 71:9,11,21
 72:1 95:15 96:6
helped 62:23 90:23
helping 90:25
Hemmert 5:16
hereinafter 25:1
high 7:22,23 8:5
 82:6

higher 88:23
historically 85:15
history 29:21 98:3
holding 67:10
Holmes 2:21 3:6
 4:11,18 6:1 42:9
 107:15 109:12
 112:14
honestly 37:8
hope 32:10
house 17:20
housekeeping
 75:15
HUD 103:10
huge 87:23
hypothetical
 109:20

I

ID 2:23
Idaho 1:2 2:4,7,14
 2:19 4:25 8:17
 19:20 97:23 98:12
 105:21
idea 90:17 98:23
identical 48:9,10
 59:1,3,7
identify 13:12
 40:24 53:7 88:19
 92:8
impact 35:22,23
impasse 93:25
imposed 87:3
improve 72:11,20
 108:14,21
improvement 94:21
 94:25
improvements
 56:23,25 57:5,11
 57:13,18 58:4
 70:25 71:1,21,22
 107:20 109:23,25
 110:3,6,9,11
improves 57:24
inadvertantly
 58:17
include 6:25 28:19
included 29:7 59:18

include 41:18 59:3
including 24:24
income 22:20,22,24
 24:25 25:3 34:19
 35:11 36:23 44:3
 46:23 57:18 69:4
 69:24 91:11
 100:11
increase 84:3
increasing 84:22
independent 20:4,8
 66:8
independently
 66:19
indicate 36:8 43:1
 66:12 67:24
indicated 38:12
 62:25 67:8 68:7
 74:12 79:19 80:6
 88:20 106:25
 107:4
indicates 34:6 68:1
 94:8 103:25
 109:24
indicating 40:17
individually 1:5,6
 1:11 75:18
informal 6:18
informally 16:6
information 6:15
 6:22,23 7:2 13:14
 14:13 16:5,12,16
 30:3 38:15 71:24
 90:7 92:1 97:19
 104:22 107:24
 108:2
initial 48:23
initially 23:2
input 29:4
instructed 25:21
 112:9
instructions 79:11
insurance 24:13
 48:21 73:11 74:20
 98:6,13
intend 32:5
intended 68:25
intending 67:23

intent 55:16 59:10
 69:22
interest 7:3 20:11
 35:3,4,10,11,16
 74:3 75:19 76:3,5
 76:8,17,21,22
 80:4 82:14 84:19
 85:8 87:24,25
 107:1,9
interested 80:6
interests 84:24
interpret 37:4
interpreting 112:2
introductory 34:5
involved 9:11 19:6
 19:10,12 22:9
 23:20 77:3 99:10
 99:11 101:5 103:4
 107:23 111:9
involvement 10:12
 10:14 21:14 34:20
 74:10
Ireland 70:6,15
 71:10,15 73:12
 74:10 77:14,18
 78:3,10,21 81:7
 81:12,24 82:2
 85:21 86:9 102:2
 104:4 111:3
irrigated 31:5
 33:15 72:12 88:15
 88:19,25 89:17
 108:22
irrigates 88:22
irrigating 109:2
irrigation 48:16,17
 108:21
issue 7:8 31:3,5,7
 60:13 61:12,14
 74:13 75:4 85:5
 88:5,14,24 95:8
issued 41:25 73:13
issues 7:13 24:19
 28:19 29:7 31:11
 60:11 61:9,16
 88:11 93:9
item 52:20 54:2
 94:20

items 6:20 52:12	96:2,23 97:1,6,17	know 10:20 11:18	47:15,20,23 48:8	lessor 49:4,7,8 50:9
J	100:19 102:3,12	16:14 17:10,17	48:9,10,10,13,22	53:2 58:13 59:4
J 2:21	103:7 104:25	19:23 20:5,8	48:23 49:1,9,17	lessor/lessee 49:25
Jade 62:17,18,20	106:2,14 107:21	23:13 26:22 27:13	49:23,24 50:9,10	letter 3:11,12,13,14
90:23	107:23,25 108:6	27:16 28:22 29:25	50:16,17,24 51:4	40:16 77:17 79:10
January 9:15 34:4	109:21 110:13,16	30:6 35:5 37:8	51:21 52:1,6,8,14	83:14 92:12,13,17
52:7 58:4 92:17	110:17 111:12,13	39:21,22 40:20	53:8 54:15 55:4	92:20 93:1,12,21
93:13,21	111:21 112:7	42:14 47:10,11	55:11,16,25 56:7	94:7,11,12 95:18
Jerry 1:11 2:15,24	Jerry's 13:25 29:25	58:3 59:24 62:8	56:9,15,19 57:4	112:9
4:12 5:15 11:9	62:5,17,25 66:2	62:21 63:18 64:4	58:11 59:5,7,11	letters 7:1 92:9
12:9,16,18,23	75:1,12 81:13	64:8 68:17 71:25	59:12,17,22 60:6	let's 4:5 13:19
13:2,17,21 14:8	83:8 87:4,16	72:14 75:5,21	60:11,16,18 61:4	20:18 33:3 34:1
14:21 15:1,4,10	91:17 99:19 100:9	78:21 79:23 81:8	61:18 62:11,19,24	38:5 45:8 47:13
15:11,17,22 16:19	jobs 27:18	82:11,15,16 85:10	64:1 68:1,15,16	47:19 51:15 52:5
16:23 17:21 18:8	John 1:9,16 2:1,20	87:10,11 89:4,5	68:22,22 69:23	54:2 60:4 61:25
20:7,12 22:25	3:3 4:1,7,9,22,24	91:1 93:20 94:9	72:18 86:5 91:4	68:3 70:4 72:6
23:9 24:4,8 25:5,8	7:4 20:19 39:1	98:15 99:2 100:1	109:24 110:6	75:19 77:12 79:3
25:23 26:10 27:13	42:20,22 44:19	101:15,21 102:14	111:19,22 112:1,3	79:13 81:17 83:18
28:5 30:8,12,13	45:10 56:8 60:25	103:21 104:4	leased 24:3 56:23	85:7 92:4,16
31:22 33:5,6 42:4	86:24 109:13	105:8 106:7	63:1 69:20	94:11 96:12 97:9
42:12 43:16,22	joking 68:10	108:12 109:5	leases 47:13 50:12	level 43:20
44:1,6 46:2,3,23	JUDICIAL 1:1	110:9,18	50:13,22 51:5	liable 36:24
47:5,16,23,24	July 8:10	knowing 78:17	53:1,21 54:4	license 8:20
48:15,23 49:10,23	June 9:20 18:3	knowledge 9:12	56:21 58:15 59:1	licensed 8:22
50:5 52:22 53:4	20:21 36:7 65:19	15:25 21:21 35:14	59:12 62:14 68:19	liens 25:24
53:10,14,25 54:9	70:9 72:24 73:13	62:3 63:25 65:24	112:3	life 22:21 25:3
54:11,18 55:5,12	73:14,24 78:4	77:2 91:3 96:24	leasing 64:5	27:20
55:15,21,24 56:22	109:24	110:5,19	leave 33:2	lifetime 34:19
57:4,9,15,24	K	L	leaving 32:20	limitations 98:4,5
58:11,19 61:3	Karen 18:9	land 15:23 44:13	led 30:20 53:13	line 51:24 54:11,19
64:8,17,24 65:10	keep 66:8 85:13,13	45:13 63:1,2 64:1	57:2	54:25 77:3 81:18
65:16 66:12,14,23	85:16 99:4 103:23	74:22 84:15,16	ledger 13:25 15:23	81:23 82:7,21,22
66:24 67:5,11,20	108:25	88:19 90:19	41:20 42:24	85:14 94:21,25
68:4,13,25 69:14	keeping 59:10	language 49:14	left 19:1,17,19 23:4	95:5
70:4,6,10,14,23	66:19 108:24	51:4,8 55:16 56:9	50:25 58:17	lined 80:15
70:25 71:9,20,25	kept 64:20	58:14 59:4,7,17	legal 11:19 12:5,12	lines 48:17
72:7 77:7,14	key 109:1	112:4	12:23 14:15,15	Lisa 27:23 33:12
78:11,24 79:1,12	kind 25:24 32:19	latest 39:1	15:17 16:20 60:13	list 28:11 31:1 94:1
79:19 80:7,11	43:17 54:22 61:22	law 6:6 8:1 87:2	60:14 112:1	110:14
81:2,8,9 82:25	65:12 68:8,10	lawsuit 28:11 60:11	Lemmon 101:13	listed 26:20,21 27:4
83:12,16 84:8,25	75:15 79:21 80:3	lawyer 10:17	Lenae 18:9	28:16,20,25 29:1
85:7,20,22 86:16	88:24 89:20	lawyer/client 9:25	lender 80:7 84:11	32:24 33:4 34:12
88:3,7,10,20 89:2	108:18,25 109:13	lay 96:21	103:19,22 106:20	60:23,25 94:4
89:6,7 90:5,7,14	kinds 72:19	Leahy 63:2 69:21	lenders 72:4 79:21	106:23 107:3
91:8,19 92:1 93:4	knew 10:24 62:18	85:2	lessee 44:1 47:25	listing 26:22 27:7
93:16,19 94:5	76:16 90:25	lease 15:2 23:23	48:15 50:5 53:5	27:22 28:6,19
95:2,14,20,25	111:14	24:7 25:9 28:21	56:21,24 58:12	29:3 30:19,21
			62:6	31:12 32:6,8,18

33:7,17,19 110:11 litigation 5:9 6:20 14:5 31:6 32:14 33:14 61:9 81:5 85:6 little 78:3 83:25 109:16 lived 8:8 27:16 living 96:4 LLP 2:16 load 71:17 loan 45:13 70:8,14 73:3,7,13 74:5,11 75:1,12 76:2,24 77:7,13,18 78:4,7 78:13 79:8,15 80:10,23 81:13,19 82:10 83:8,9,20 84:1 85:6 87:15 87:16 88:6 102:5 102:9,10 103:6 104:16 109:17 loans 62:10 70:7,22 70:23 71:4,5,7,10 72:5 73:4,6 85:21 lobby 111:18 locating 80:11 location 108:15 long 8:8 19:23 27:13 97:25 98:3 110:22 longer 78:11,24 98:20 look 5:24 13:19,23 14:1,11,25 15:21 17:8 20:20 22:2,6 25:14 27:21 34:1 34:5,10 36:2,21 37:10 38:24,25 39:7,25 41:15 44:9,15 47:13,19 48:3,7 49:3 51:15 52:14 53:1 54:2 54:18,24 56:17 58:24 59:2 70:5 70:12 73:10,16 74:1 75:19,25 76:10 78:6 79:3	81:17,18 83:18 94:11 looked 66:1 68:19 103:18 104:10 105:24 looking 44:20 56:18 92:25 103:14,16 looks 49:9 58:14 63:23 73:12 76:9 76:11 108:12 loss 91:15 lot 19:9 26:8 30:3 91:13 lots 87:24 low 109:1 Lynn 1:10 8:24 9:13,23 12:8 15:18 18:13,14 19:5 20:19 21:3 21:14 24:22 34:4 34:8 35:1,2 36:5 50:25 51:1 Lynn's 22:3 36:10 36:17	marked 7:14 38:8 38:10 92:6,11 112:19 market 32:16 64:6 69:8 89:24 materials 95:7 101:9 matter 2:8 6:19 30:13 41:7 67:1 87:1 94:10 matters 5:11 14:3 14:16 Max 5:16 6:23 8:4 9:10,17 10:3,17 10:19 12:18,22,24 12:25 18:16,20 19:6,9,11 20:22 21:2,18,25 38:1 39:4,15 40:4,16 41:11,23 42:19 44:15 47:11,23 76:12 maximize 69:24 McBride 5:16 76:22 77:4 mean 35:14 37:6 45:14 52:21 54:13 59:25 68:16 75:14 87:18 90:1 101:2 meaning 45:16 96:16 means 54:7,13 55:11 61:5 mechanics 104:17 meet 17:20 meeting 17:18,25 26:15 93:7 98:18 98:24 99:1,13 member 8:17 memorandum 93:14 memory 24:16,17 25:13 26:15 40:4 53:16 66:11 77:11 101:4 102:8 104:10 111:13 mention 34:15 mentioned 18:7	40:1 8:24 met 9:16 11:21 17:18 29:2 93:18 methods 79:22 middle 48:14 military 27:17 mind 7:15 27:8 59:19 69:12 81:1 86:14 88:1 102:12 112:1 minute 38:6 minutes 61:25 missed 97:11 missing 42:10,12 98:4 misunderstanding 35:13 moment 27:9 42:22 52:10 78:8 money 23:6 43:1,6 43:21,23 44:11 45:22 46:6 57:15 71:2 81:6,7,15 82:24 83:2,10 85:20,22 86:2,8 88:3 91:14 95:5 95:12,13 98:19 99:20 109:17,22 Monte 6:23 9:11 12:18,25 19:8,10 19:14 21:25 39:19 39:22 40:5,10,21 41:6,11 47:12 51:17 Monte's 41:1 month 54:21 64:24 monthly 15:23 months 26:14 34:3 98:1 111:1 mortgage 16:2 55:2 64:25 70:14,18,21 71:6,7,17 72:23 73:1,18 75:11 77:10 78:12 79:9 80:18 82:3 83:6 84:17,21 86:17 101:9 104:8 mortgaged 111:3	mortgages 70:4 73:8,23 74:12,24 77:15 mother 46:24 move 27:7 moving 7:22 multiple 91:21 96:5 105:18 mutual 32:22 112:11
N				
N 3:1 Nam 8:1 name 4:22 18:16 74:13,23 75:11 76:5,12 97:16 98:11 101:14,15 names 18:9 nature 8:11 64:9 98:20 near 25:16 necessarily 35:7 88:5 necessary 7:7 99:3 need 42:9 43:18,19 44:10 79:20 90:22 91:2 94:23 needed 29:7 74:19 75:9 78:15 91:7 96:10 102:2 needing 104:18 needs 27:10 64:25 94:22,25 negative 102:16 negotiated 95:3 negotiation 101:5 104:16 negotiations 107:4 neighbors 97:7 neither 36:22 Nelson 92:15,19 107:25,25 net 23:24 24:14 53:24 never 29:6 35:14,15 56:3 58:6 63:12 75:13 76:17 86:7				

86:8,11 97:1
 99:24 100:24
new 54:3 57:3
 59:17 68:22 73:7
 73:18 78:25 79:2
 79:20 81:19 82:24
 83:8,10 89:12
nine 33:5 74:8
 95:10
ninety-two 15:24
noncultivated
 90:19
normal 50:16
North 4:24
notarized 20:23
Notary 1:21 2:6
note 4:5 16:2 34:13
 37:13 48:15 51:16
 51:23 55:2 70:5
 72:25 74:1 77:25
 79:4,5,9,14,15
 80:18 81:12,20
 83:2 86:17,24
 87:22 93:22
 100:23 101:3,6,8
 101:17,18 102:11
 106:1,4,6,13,16
 106:16,18,19,20
 109:16
noted 62:14
notes 70:3,6,9 81:7
 81:8 82:3 83:6
 97:10
notice 4:7 69:2
notices 7:2
November 31:19
 68:21
number 3:10 8:20
 10:22 17:7 18:17
 31:3 33:15 52:5
 52:14 62:22 67:15
 67:16 74:7 82:9
 88:15,21,23 94:14
 94:20 95:17 98:17
 100:2,22 112:6
numbers 72:19
 81:15 85:11
Nye 2:3,11

O

oath 56:5
Object 57:6
Objection 87:6
objections 4:15
obligated 55:18,24
obligation 24:8
 58:21 69:1 81:2
 86:4,15 87:2,17
 88:2
obtained 6:20
 31:22 32:3 38:11
 77:14 83:19
 102:10
obvious 100:17
occasion 10:25
 11:10 17:23 22:1
occasions 17:7
 105:24
occur 103:17
occurred 20:11
 22:8 26:22 31:13
 79:8
occurring 53:19
occurs 60:21 61:6
October 6:15 26:15
 68:13 92:12 93:1
 110:25
offer 107:2,7
offered 98:14
offers 33:8,23 60:5
 106:25
office 9:10,17 10:1
 11:22 19:1,2
 21:11 30:12 32:4
 65:10 67:21 93:8
 96:2
officer 76:23
offices 2:2
offsets 87:14
Oh 5:7 21:7
okay 7:4,19 13:11
 24:1 25:14 26:17
 39:6,12 40:6 41:4
 44:20 45:25 47:19
 51:22 53:6,11
 54:18 57:23 64:23
 67:22 75:21 77:12

82:5 89:20 97:9
 97:22,25 98:6,16
 98:23 99:7,14
 100:7,12 101:16
 101:19,23 102:1
 102:18,22 103:17
 103:25 106:1
 107:9,17 108:4
old 6:25,25 21:10
older 6:22
oldest 24:4 39:2
Olson 2:3,11
once 11:14 60:12
ongoing 29:13
 30:17 45:15,17
 66:14 78:10
open 17:4 96:21
operated 22:19
 24:4 84:25
operating 27:14
 62:5,10 70:22
 71:4 73:6,7 85:25
 86:3,5
operation 25:19
 26:5,12 48:25
 49:11 62:11 65:5
 65:6 71:14 80:21
 81:9 100:10
 108:19
opinion 28:22
 60:15 64:14 68:10
 76:13 87:12 88:22
 108:20
opportunity 5:21
 5:25 6:4 37:20
 103:23
opposed 35:2
optimistic 32:11
option 25:9 102:8
options 25:8 72:3
 93:10
orally 90:12
order 60:9 69:24
 77:6 80:3
original 38:21,22
 45:12 89:10
originally 107:3
 111:3

origination 82:10
 82:12
outside 27:18
outvoted 33:6
overriding 84:7
oversee 95:20
oversight 69:3
owed 83:23 86:15
 86:15 88:10
owing 15:6 67:23
 83:20
owned 74:20,21
 75:18 76:21,22
ownership 35:9
owning 35:3

P

page 3:3 13:23,24
 14:2,11,25 15:16
 15:21 20:20 22:6
 24:20 25:10,16
 34:11,14 36:2,20
 37:11 48:3,14,14
 49:3,15 50:8,19
 52:11,11,12 54:3
 54:11,19,23,25
 55:5,14 56:17
 58:7,10,24 59:2,2
 66:1 82:8,20
 94:13,19
paid 14:1,21 22:23
 23:3,7,8,11,13,13
 25:25 34:19 41:24
 42:3,5 43:2 44:13
 45:11 46:7 48:23
 52:15,16 53:4,9
 56:24 57:4 58:5
 58:23 65:16,21
 66:4,25 67:5 69:3
 77:19 78:7,22
 82:11 84:17
paperwork 40:25
paragraph 22:17
 24:20 25:15,15
 34:5,13,14,15,16
 36:3,22 37:9,10
 48:18 49:5,16
 50:8,12,20,21

55:25 56:15,19,20
 57:3 58:12 59:3
 93:23
paragraphs 58:25
 59:6,11
parents 12:9
part 15:8,9,15
 22:14 48:22 54:15
 55:4 59:15,25
 61:9 68:2 76:14
 76:19 81:4 85:24
 92:21 99:7 100:12
partially 56:16
particular 16:9
 21:20 32:6,7 36:1
 36:14 37:9 43:4
 49:23 52:2,6
 53:13 79:15 89:23
 96:1 97:7 99:13
 105:16,23 106:13
 106:18 110:9
particularly 11:24
particulars 22:2
parties 40:13 49:20
 50:23 60:22 61:21
 93:25
partnership 49:18
 50:4
party 34:12
passed 9:14,19
 10:19
pause 39:11 64:4
 109:9
pay 15:12,12 23:10
 23:23 24:12 30:13
 46:3,4 49:4,10,10
 49:12 54:14 55:17
 55:18 56:7 57:18
 58:9,13 67:23
 69:1 71:4 79:11
 81:2 82:2 86:5
 91:9 95:7,10
payable 68:21
 112:7
paying 14:9,21 15:5
 15:19 16:1 52:23
 53:2,10,25 54:21
 55:19 57:15,16

58:20 62:5
payment 16:3 23:2
 23:12,23 24:11
 41:18 43:6 44:18
 44:22,25 56:13
 65:23 68:1,16
 77:16 83:15 85:24
payments 15:2,3,24
 16:1 23:9 35:12
 41:22 43:24 45:4
 54:5,14 55:1,8,12
 55:17,19,20,23
 56:7 62:9 63:16
 64:25 65:25 66:3
 66:9,20 68:15
 69:14,17 84:8
 86:8,11 88:4,6,8
payoff 71:6,7
pays 85:1
penalty 87:24
people 72:5 107:5
percent 83:8,9
 87:25
performance 84:8
performed 31:16
 93:5
period 15:4 19:1
 23:1 29:11,16
 30:16 37:25 44:10
 45:6 47:1 50:14
 62:4 66:5,10 67:3
 68:2,12 84:17
 99:2,8 105:13
periodically 46:17
periods 30:5
permit 59:20 60:9
person 19:11 21:11
 110:18
personal 10:7 18:18
 34:7 41:1 47:24
 62:5 91:17 100:9
 108:5
personally 9:18
 11:18 12:2,10
 14:8 16:20 21:3
 30:11
perspective 29:10
 36:16

pertaining 14:4
 14:16 47:18 62:11
 65:4 70:7 79:7
phases 6:14
phone 11:1 29:5
 90:6
physical 106:8
 107:20
physically 104:7
picking 53:14
picks 85:2
pipeline 95:15
place 4:6 34:17
 58:15 78:4 84:1
 88:18 96:6 98:24
 101:9 104:1 106:6
plaintiffs 1:7 2:2,10
 4:9
plan 10:11,15 13:3
 65:12 89:15 95:19
 96:10,15
planned 95:22
planning 12:1
 13:17 16:18 20:13
plans 71:22
please 13:20 44:16
pledge 74:25
plenty 84:11
Pocatello 2:4,14,23
 4:24 8:9
point 9:5 13:4
 19:17 21:22 26:2
 26:18 30:10,16,17
 32:11,19 39:17,20
 41:5 42:1 43:4
 48:12 50:11 52:16
 52:22 62:19 65:13
 85:17 89:19 96:22
 97:2,2 99:4 102:9
 103:2,21 109:4
pointing 48:8
policy 73:11,23
portion 23:20 63:1
 67:25 76:11 81:14
posed 54:20
position 19:19
 57:17 73:2 85:3,4
 86:23

possession 27:14
 86:19
possible 78:23
 93:12 108:15
post-conviction
 5:11
poured 69:9
power 36:25
practical 53:18
practice 8:12 19:14
 39:24 105:3,6
practiced 19:24
practices 89:22
preceded 74:4 76:2
 76:20
premises 56:23
prepaid 82:14
 87:24
preparation 6:2
 10:10 34:21
prepare 5:22
prepared 6:17 13:3
 16:9 21:3 38:14
 45:22 51:4 68:23
preparing 12:5
 13:6 37:25 47:8
present 2:24 4:8,11
 4:12 6:16 108:1
presented 103:2
preserved 84:12
pretty 23:7 58:10
 63:16 85:1
previous 54:4
previously 7:14
price 31:13 32:23
 33:7 60:5 63:18
 63:25 69:6
primarily 6:22 90:4
 90:11 105:3,7
 109:6
primary 10:17
 19:11
principal 83:22
 84:2,3
principle 36:22
printout 76:11
prior 5:12,18 8:25
 9:7 11:6,19 19:2

21:8 27:1,14
 50:16 51:20 53:1
 53:21 56:21 58:15
 59:1,12 73:5 81:7
 84:15 89:6 90:22
 101:16 103:12
 107:23 110:16
 112:3
priority 23:8
private 93:18
privy 33:25
probably 5:7 16:16
 29:10 39:17
probate 21:15
problem 36:15 40:6
problems 19:22
proceed 28:6 94:1
proceeding 38:13
 40:12,14 41:7
 47:21
proceedings 6:18
proceeds 25:22
 27:11 51:13 59:21
 61:2,13,19
processing 58:16
produce 41:2 66:16
produced 13:21
 15:1
projects 19:9
promissory 70:6
 79:4,5 81:20
 101:17
proper 29:9
property 14:17
 21:22 22:13 24:2
 25:5,20,25 26:5
 26:20 27:3,10,14
 27:17,20,23 28:16
 30:25 32:8,16,23
 33:9 34:25 37:15
 44:2 49:6,13
 51:12 52:21 54:5
 55:8,17 56:8
 59:20 60:25 62:6
 62:12,16,18 64:5
 64:10,15 65:16
 69:20 70:22 71:1
 71:3,12,13 72:21

73:17 74:3,14,25
 76:4 80:21 84:5
 84:10 85:13 89:23
 93:3 94:1,4,15
 95:21 106:23
 107:1,20 108:6,10
 108:13 109:23
propose 96:11
proposed 93:11
prospective 29:8
 72:4 107:6
protected 85:4,8
protecting 84:24
provide 35:11
 38:15 64:24
provided 5:13,17
 16:6 25:4 31:24
 46:16 47:20
provision 23:22
 37:17 50:7 60:6
 62:14
provisions 22:5
 27:8 36:9 37:12
 51:9 63:14 87:25
 111:21 112:1
Public 1:21 2:6
pump 72:9
pumps 48:17
purpose 71:3 96:11
purposes 7:11 16:3
 30:19 63:19 69:13
 86:2
pursuant 4:7 24:7
put 29:9 31:8 56:9
 72:15 73:23 74:11
 75:10 108:5
putting 27:22 84:5
P-a-r-t 68:2
p.m 112:20
P.O 2:13,18,22

Q

question 4:17 25:2
 35:13 42:23 50:14
 54:12,20 55:10
 57:7 59:19 61:3
 81:1 85:22 86:14
 86:25 88:13 89:13

91:23 100:17 1 08:4 109:20 questions 7:18 11:8 1 7:6 33:15 48:11 55:15 92:8 97:18 98:17,22 100:2,23 1 01:20 109:9 1 12:15 quit 39:24 quitclaim 74:2,15 74:22 75:6 76:24 77:6 111:8 quitclaimed 74:2 quote 25:18 50:22 55:3,7	76:17 84:3 93:3 really 21:7 22:1 31:10 36:13 37:8 43:18 64:17 97:1 100:20 realtor 32:17 33:12 106:25 Realty 27:24 reason 14:7 22:2 28:10 42:14 46:13 48:7 55:20 76:9 83:1 100:7 reasonable 80:22 reasons 19:18 recall 11:21 13:6,8 14:15 16:13 41:6 41:10 43:9 54:9 59:25 62:22 74:18 77:16,22 78:16,17 78:18 80:4 101:1 101:10 102:6,18 102:22 103:3,12 104:2,15,20 105:1 105:19 106:5,8 110:22 111:2,6 receipt 43:5 receipts 65:22 receive 24:14,14 81:6 received 24:16 33:8 69:13 86:7 89:9 109:15,17,19 receiving 22:20 44:2 66:9 Recess 62:1 92:5 97:12 recitation 53:18 recognize 20:24 27:22 34:2 47:22 73:11 92:21 101:14 recollection 27:2 38:19 44:4 45:11 46:6 70:24 71:8 73:9 74:9,16 77:2 104:13 record 4:5,13,22 9:14 38:5,7,10	42:18 45:8,9 62:2 67:9,14 76:18 92:4 97:13 recording 74:15 77:5 records 6:6,10,11 7:17 39:14 65:24 66:8,11,19 110:19 reduced 53:14 reduction 53:23 84:2 refer 54:10 reference 88:11 referred 24:2 35:8 51:10 95:12 referring 94:24 95:22 96:8 refinance 111:4 refinanced 78:15 102:3 refinancing 80:12 81:12 83:8 reflect 13:25 16:5 39:4 83:19 110:20 reflected 18:17 39:10 40:2,8 44:11,18 74:20 76:20 reflecting 15:23 88:18 reflection 53:17 102:6 reflects 44:21 48:15 76:3 89:9 regard 7:2 regarding 58:9 77:18 98:17 Regardless 86:25 register 16:17 66:3 regular 35:8 reimbursed 109:25 relate 15:17 24:19 related 13:14 20:15 relating 4:2 14:3,16 relationship 9:25 11:5,14 12:20 16:23 17:5 49:19 49:22 50:1 66:15	90:24 relative 16:1 relatively 87:23 relevant 7:13 relying 42:18 remain 71:12 remained 76:5 remaining 24:24 25:5 remark 68:8 remember 5:2 10:2 10:21 11:23 17:18 17:24,25 19:8,10 19:16 21:7 23:17 23:18,25 33:21 38:17 40:15 45:19 45:24 47:6,11 62:24 71:5 74:17 75:2,3,7 77:8,23 78:20 79:18 95:4 95:11 98:9,10,21 98:22 100:15 101:7 102:17,20 102:21,24,25 103:5,14,16,20 104:4,6,19,24 105:16,23 111:17 111:18 remove 48:20 renegotiate 50:10 rent 15:5,12 23:2 24:8 41:22 46:4 48:4,24 51:25 52:3,16 53:8,14 53:24 57:19 64:11 64:16 65:23,25 66:3,9,19 67:5,12 67:19,21 68:20,24 69:1,14 85:1 91:5 91:5 rental 63:15 89:23 90:15,18 rented 90:20 reply 92:13 REPORTED 1:19 Reporter 2:6 represent 50:11 58:20 92:9	representative 18:18 34:7 41:2 47:24 representatives 100:25 represented 20:4 90:5 106:14 107:25 representing 93:19 request 93:1,5 105:1 requested 95:6 104:25 112:21 required 53:4 76:24 94:17 requirement 72:17 requires 55:12 reserved 4:15 residence 11:1 residual 47:4 93:3 resigned 39:24 resolution 32:15 93:12 resolve 30:9 85:18 89:3 resolved 30:24 Resources 89:2 respect 10:10 20:11 61:18 88:15 response 92:18 102:16 responsibilities 46:22 responsible 48:24 85:7 result 29:23 93:7 results 108:3 retained 3:15 93:18 retired 19:1 return 39:8,8,14,16 39:25 40:1,7,8 42:19 43:11 44:16 44:16 99:19 returns 37:22,25 38:14,25 39:3,21 41:13,16 42:18,20 42:25 44:11 45:3 45:22 46:10 47:2
---	---	--	---	---

R

R 34:7,9
Racine 2:3,11
raised 89:5,22
ramifications 106:3
ranch 17:4,7 24:3
35:18 57:11,22,25
80:24 103:23
108:13
Randall 2:12 4:8
Randy 92:13
range 46:21 63:24
rate 80:4 90:15
ratification 34:16
ratify 34:18
reach 26:11 32:22
102:4
reached 43:25
93:24 94:5 99:5
100:8
read 25:11,17,18
48:22 50:22 60:20
102:19,23 103:2
104:9 105:21
reading 39:2
102:21 103:12
ready 101:3
real 14:17 26:24
35:10,16 49:5,13
52:20 54:5 55:8
55:17 56:8 65:16
71:18 74:3 76:8

91:18 98:19 100:2 100:4,10 review 5:21 6:5 7:7 7:17 10:15 13:5 21:1 37:20 41:13 54:9 70:3 reviewed 5:23 37:9 right 11:17 14:16 23:18,25 24:10 26:16 35:19 38:20 50:9 59:5 60:7,8 60:16 69:22 78:1 78:5 80:4 81:22 82:23 83:11,17,21 85:21 86:10 89:18 100:13 rights 88:17,20 rise 43:14 49:18 70:21 74:14 77:5 88:24 risk 84:5 road 60:24 Robert 31:15 rocks 48:21 Rodney 1:20 2:5 room 93:8 rotation 89:22 roughly 63:24 run 11:10 22:25 43:19 53:22 64:14 64:21 71:13 98:20 99:18 100:8 109:3 running 64:20 90:23 91:2	102:24 says 27:9 33:5 34:16 36:4 37:13 48:18 49:17 50:8 55:3,7 56:2,21 58:13 60:6,18,20 61:3 68:20 94:17 schedule 73:22 75:20,25 school 7:22,23 8:1,6 Schrade 18:9 scribner's 58:8 season 96:14 second 13:24 14:11 48:10 50:20 59:3 65:19 67:11 73:2 73:6 93:22 109:8 secure 70:14,22 72:24 73:3 75:12 77:15 111:3 secured 73:5 79:9 security 73:6 74:25 84:11 see 9:17 10:3 29:20 36:13,21 39:3,9 39:10,12 40:1 41:15 42:24 44:17 44:19,21,24 49:16 51:17 53:3 54:10 70:9,15 72:2,6 73:16,21 74:6 79:5,21 82:10 83:21 89:9 97:10 102:13 106:16 seeing 21:7 40:15 111:17 seek 61:17 seen 21:5 38:4 70:13 78:19 108:2 108:11 selective 8:14 sell 25:22 37:1,14 51:12 69:8 94:15 sending 47:6,11 sense 17:1 sent 6:21 29:3 40:20 47:3,7,10 47:12 83:14 92:14	101:3 sentence 36:4 54:3 57:8 58:13,17 95:19 separate 66:7 99:21 serves 26:16 Service 44:17 serviced 80:23 Services 41:19 101:24 set 25:1 31:14 35:25 36:6,17 57:8 settle 67:5 settlement 79:7 82:7,8 103:10,18 104:1 seven 50:19 51:20 83:8 95:10 Shaffer 2:24 4:8 shake 12:19 share 68:9 sheep 109:6 shift 65:23 shifted 58:11 short 107:2 Shorthand 2:6 show 32:18 51:17 83:22 showed 66:3 shown 50:17 63:22 73:22 75:18 shows 34:11 48:4 50:13 81:19,23 82:7,14,21 89:18 side 17:1 53:19 sift 30:2 sign 74:22,24 75:6 76:16 77:10 80:3 87:22 106:17 signators 102:11 106:22,22 signature 20:22,23 28:1 34:11,17 70:17 101:24 112:21 signed 34:11 52:8 55:2 60:15 70:10 70:14 73:1,19	77:15,25 78:12 79:5,14 80:17 83:6 86:24 91:5 102:19,23 103:13 104:9 111:8,14,19 significant 26:7 30:23 31:11 signing 51:18 70:21 77:5 83:5 86:17 101:8,16 104:3,5 106:8,16 similar 37:17 55:13 106:21 simple 51:16 simplistic 85:19 simply 15:11 28:13 28:22 41:7 42:14 49:5 51:10,19 76:7 86:16 96:8 96:11 single 26:6 35:2 99:1 sir 5:20 6:3 8:19,23 9:3,6,21 10:16,18 12:3,11 14:6,18 14:23 15:14,20 16:21 21:16 22:11 34:22 52:4 92:24 sisters 17:21 18:7 sit 42:15 106:2 sitting 10:3 104:13 111:18 situation 24:1 72:2 80:19 six 36:3 49:15 50:8 59:2,2 98:1 SIXTH 1:1 smart 33:2 Smith 2:17 3:5 4:13 4:19 29:4 38:9 57:6 61:23 87:6 97:15,16 107:17 107:18 109:8 110:10 112:17 Smith's 97:5 Soda 11:1 17:19 77:9 96:4 sold 25:10 26:20	27:4,10 59:20 60:23 69:5,18 sole 91:25 solely 19:6 somebody 96:18 100:19 101:2 son 24:4 62:17 sons 25:5 sophisticated 108:19 sorry 10:20 74:8 103:15 sound 101:25 source 92:1 Souza 1:9,16 2:1,20 3:3 4:1,7,10,24 42:20 97:16 speaking 27:19 specific 22:7 24:15 24:16 52:13 60:1 71:22 72:19 77:11 91:24 96:5 111:20 specifically 44:5 56:3 65:7 103:6 105:19 111:11 112:9 specificity 110:8 specifics 33:19 spelled 25:10 spent 94:23 spoke 29:5 35:15 spoken 44:6 107:5 spousal 22:23 spouse 22:7 24:21 24:23 spring 94:23 95:9 Springs 11:2 17:20 77:9 sprinkler 48:17 SRT-99 1:20 standard 98:12 standing 8:18 standpoint 29:25 start 26:15 79:13 92:16 97:18 99:15 started 8:3 72:8 110:24 starting 7:21
--	--	---	---	--

S

safe 111:25
sale 27:7,23 28:11
59:23 60:9 61:1,6
69:11 94:1,4
sat 10:4
save 15:10
saw 29:6 68:23
saying 24:22 25:12
40:19 42:11 53:20
55:11 56:4,6 58:3
72:9,10 85:10
87:11,12 90:1

state 1:2 2:7 4:22 8: 17,22 97:24 98: 12 110:8 statement 33:21 44:18 49:16 55:6 79:7 81:18 83:7 91:12 94:16,20 103:11,11 statements 13:21 15:16 41:18 46:15 states 24:21 25:17 36:22 static 94:10 stating 93:24 statute 98:4,5 105:21,25 stay 33:5 43:23 86:19 96:3 step 41:11 STEPHEN 2:17 stepmother 46:25 stepsisters 18:8 Steve 4:13 97:16 sticks 102:12 stipulation 4:15 61:22 stipulations 52:13 stop 10:2 66:15 store 72:15 stored 69:5 study 107:19 stuff 6:19 13:14 subject 50:24,25 59:8,13 60:18 67:1 81:3 105:17 subjects 105:18 sublease 63:11,19 65:4 85:2 95:19 95:22 96:10,15,18 96:23 subleased 62:15,17 96:24 submitted 58:2 subsequent 10:15 49:24 50:22 successor 39:20,23 40:11,21 41:9 51:18	suddenly 102:5 sufficient 84:9 sum 46:20 52:14 summary 6:11 7:21 14:25 66:2 summer 96:21 supplement 7:17 supplied 16:11 21:11 support 22:23 41:17 suppose 51:6 64:23 94:16 supposed 48:16,19 56:7 58:9 sure 7:10 9:16 10:4 17:24 19:10 22:24 34:25 40:18 45:14 54:7 59:12,16 61:25 72:16 79:25 90:24 100:3 111:10,13 suspension 97:23 sweat 108:5 sworn 4:2 system 72:11,13 99:21 108:22	106:6 107:13,14 108:1 111:7 talking 30:9 43:16 44:5 45:20 47:7 64:8 66:12 82:25 100:15 101:1 103:5,7 104:15 106:19 talks 22:7 tax 7:1 37:21,25 38:14 39:13 40:1 42:18,24 44:11,15 45:21 46:10 47:2 91:18 98:19 99:19 100:2,4,10 taxes 24:13 25:24 45:17 49:5,12,13 52:20,23 53:3,10 53:15 58:9,11,13 58:20,23 65:16 68:16 telephone 17:22 tell 4:2 10:21 56:3 75:3 78:15 79:24 91:20 99:5 100:16 term 51:25 62:10 70:22 73:5 terminate 24:23 50:9,16 59:5,22 60:7,8,17 61:5 69:23 terminated 60:12 terminates 51:11 60:21 termination 111:21 terms 6:19 16:11 23:14 29:4 31:2,4 32:13,15 33:7,19 48:9 50:10,24 51:1,20 57:8,21 59:8 60:18 61:1 63:13 64:14 72:1 72:1 75:14 77:8 79:1 80:2 85:6,11 90:11 91:23 96:5 101:5 106:3 109:23 110:25 testament 36:6	50:25 testamentary 36:9 36:17 37:12 60:20 testified 4:3 58:19 76:23 102:1 106:24 testimony 3:3 13:2 Thank 7:3 109:10 112:18 Thanks 107:17 theme 49:9 thing 4:25 30:9 55:7 75:15 89:4 things 5:11 17:9 66:16 72:20 89:7 98:19 108:24 think 5:12,16 7:12 7:13 9:13 11:12 12:17,25 13:4 16:10,25 17:2,4,9 21:9,11 23:24 26:13 27:17,19 29:5,6,10,22,24 31:1,3,9 33:5,18 33:20 40:18 42:9 43:15 47:20 52:24 54:15 56:10 57:9 57:20 58:18 59:15 60:2,10 61:3,5,8 64:19,21 65:8,9 65:25 66:18 67:8 76:6,13 81:3,4 83:1 84:6,7,9,10 84:11,11 85:5,11 85:14 86:21,22,25 87:8,9,13 88:5,12 88:15 89:6,11 91:10,13 95:2 96:20 97:10 99:1 99:11 100:20,23 101:12 103:6 105:6 106:10 107:12 108:19 109:9 110:24 111:7,11 thinking 17:17 third 14:25 48:10 49:3,4,16 58:12	61:11,11,11 THOMAS 2:21 thought 33:18 57:23 70:2 74:8 76:19 92:1 three 5:7 22:6 24:20 25:5 26:3 29:13 32:20 36:20 52:12 54:2,19 55:25 56:15 58:7 66:1 93:3 94:19 106:12 tillable 63:2,21 64:1 time 4:6,16 6:17 7:3 8:3,16 10:1 11:20 12:21 13:4 15:4 16:9,24 19:2 21:22 22:9 23:20 26:2,7,16,18 29:2 29:11,17,18,22 30:6,16,20 36:1 38:1 39:9 40:22 42:1 43:4 44:9 45:3,20,20,21 46:21 47:1,7 48:4 51:17 52:16,22 56:25 59:22 60:3 61:23 62:4,8 63:6 65:13 67:3 70:13 70:24 72:14,14 79:5 82:3 84:15 85:12 89:25 90:3 90:20 93:17,18 94:2 95:3,6 96:2 97:8 99:3,8,23 102:23 103:12,17 104:12 105:13,20 105:23 106:7 111:5,8,15 times 5:6 35:15 91:1,21 99:12 103:7 105:8 title 15:25 16:3 73:11,22 74:13,20 75:10 79:8,11 83:19 101:11 104:2,2 111:9 titled 25:15
---	---	---	---	--

today 5:19 6:7,9
 42:15 90:2 104:13
 112:6
told 63:13
Tom 4:11 5:15 77:4
top 23:7,8 36:21
 39:1 48:4 52:12
 54:2 55:5 56:17
 94:19
totally 21:17
track 66:9
Tracy 8:7
transfer 37:1
transmission 7:1
treat 35:20
trial 4:16
tried 109:5
trier 86:21 87:13
TROXELL 2:16
truly 61:10
trust 1:10 8:25 9:2
 9:4,10 11:4,16
 14:4,9 15:5,13,18
 17:4 19:5 20:3
 22:14,18,19 24:9
 24:12,12,23 25:25
 33:1 34:2,24 35:2
 35:4,10,18,21
 36:3,8,9,14,17,20
 36:23 37:2,5,12
 39:16 41:20 42:2
 42:3,14 43:1,2,7
 44:12 45:5,12,17
 45:21,23 46:4,23
 47:16,24 49:12
 50:4,15 51:1,10
 51:11 52:8,21
 53:2,22 55:4 57:8
 59:9,13 60:12,17
 60:19,20,21 62:4
 62:9 64:4,12,17
 64:19,22 70:13,21
 73:19 74:4,11,21
 75:12 76:3,22,25
 77:15 78:11 81:6
 82:16 84:5 86:7,8
 87:3,22 88:3
 89:14 94:16 95:13

98:21 99:22,23
 99:24 100:4,9,11
 104:21,23 109:15
 109:17,19 110:2
 111:2 112:7
trustee 1:9 8:24 9:2
 9:5 11:4,13,16
 12:1 14:20,22
 15:11 18:19 21:25
 23:2,3 25:21 34:9
 34:23 35:18 36:4
 36:16 37:13 38:1
 38:2 39:5,10,15
 39:18,19,20,23
 40:2,8,21 41:9,23
 42:20 44:1 46:7,7
 47:2 49:22 50:15
 51:18 52:8,17
 55:2 57:17 59:20
 60:15,24 62:16
 64:4 72:24 73:24
 74:24 76:12 77:15
 77:21 79:6,14
 80:12 83:15 84:4
 84:24 86:15,16,24
 87:4,21 88:2 89:1
 89:14 93:2 94:14
 100:19 104:22
 105:4,10,11,14,15
 105:20,22 107:11
 107:18
trusts 9:8
trust's 14:17 74:23
 75:10
truth 4:2
try 90:17
trying 29:19 30:9
 36:16 39:11 53:7
 56:11 66:18 71:9
 71:11 79:2,22
 107:13 108:21
turn 50:19 58:7
 72:25 77:12
turning 46:22
two 5:7 6:13 15:16
 31:3 33:5,14 36:2
 42:20 48:3,14
 52:11,12,20 54:3

56:17 59:6 62:23
 73:8 82:8 83:25
 94:13 106:11
typed 76:11
types 89:21 108:16

U
ultimate 99:17
 100:18
ultimately 30:20
 31:12 86:21 87:13
unable 25:19
uncertainty 64:13
undergraduate
 7:24
underlying 30:23
undersecured
 84:10
understand 22:17
 23:12 37:6 40:3
 56:10 58:22 82:9
 83:4 85:10 93:11
understanding 16:4
 26:1 30:10 35:9
 37:7 40:23 42:4
 44:6 55:22,23
 56:11,12,14 57:12
 62:20 66:6,14
 67:4 73:8 75:8
 76:4 79:19,23
 81:14 86:1 93:14
 95:24 100:14
 101:20 102:14
 106:20 110:15,21
understood 36:1
 50:23 58:21 93:16
undertaken 89:1,15
undertaking 89:16
undistributed
 24:24
university 7:25 8:2
unresolved 88:24
update 107:15
updates 10:15
use 23:9 43:23
 88:18 99:19
usual 4:14
usually 69:8

value 32:16,18 33:4
 64:6 84:9 85:8
 89:23 90:18
 107:19 108:5
various 6:10 15:5
 24:7 47:15 62:10
verbal 63:10
viable 72:2
Viet 8:1
view 32:11 91:22
vision 72:7
visit 10:3
vote 33:3
vs 1:8

W
waiting 64:12
 110:23 111:18
waivers 20:11,15
want 7:16 29:2
 32:21 38:24 41:15
 45:3 58:4 70:3
 88:13 97:18 98:16
 109:16
wanted 5:1 21:9
 57:11 69:7 70:25
 71:1,21 72:11,17
 72:20 74:21 76:15
 77:19 78:22 79:20
 92:8 94:3 106:21
wants 33:3
wasn't 17:21 23:11
 25:2 26:6,16
 30:13,15 31:5
 33:25 34:12 43:18
 43:19 62:4,8 63:5
 68:9,24 80:5,5
 93:5,19,20 95:25
 99:12,21
water 14:14,16
 64:21 72:11,13
 88:17,20 89:2
 108:23
way 10:6 17:3
 32:14 35:6 69:6
 75:15 85:15 86:20
 87:9,15 88:13

wearing 87:21
weed 72:17
weeds 108:24
weeks 28:12
went 7:24,25 8:1
 15:24 17:19 18:6
 19:20,21 30:4
 42:13 51:25 53:9
 67:9 78:19 80:7
 81:9,24 82:15,18
 82:25 83:12 84:20
 85:22 110:6
weren't 10:7 19:12
 26:11,19 80:6
we'll 15:9 26:23
 38:9,23 41:2
 76:18 78:7
we're 14:24 30:9
 42:18 107:16
we've 7:14 17:2
 35:12 41:13 72:22
 76:2 92:11 110:22
whatsoever 107:1
Whittier 8:4 18:20
 34:7,9 38:1 39:4
 47:23 51:17 76:12
Whittier's 18:16
 20:22 42:19 44:15
wife 9:19 12:8
 18:13 25:21 51:2
willing 91:8,8
wills 6:25
wise 108:15
witness 4:10 57:9
 87:8
witnesses 7:15
wondering 89:14
word 58:16
words 33:21 49:8
work 8:4,14,14,15
 10:7 11:4,19 12:2
 12:5,12,23,25
 13:17,24 14:15,19
 15:18 16:18,20
 18:21,23 20:12,13
 30:1 41:8 46:23
 92:2,2 95:7,21
 105:4,7 108:5

worked 30:19 90:25	\$50 63:24	18th 92:20	93:21 94:12 95:18	6
working 11:25	\$6,000 67:11 68:4 112:8	1881 3:10 67:17 112:7	112:8	6 70:5,7
worth 31:2	\$60,000 63:3,18 64:24 69:21	19th 31:13	201 2:3	6B 22:17
wouldn't 9:24	\$76,069.90 44:14,22	1964 7:23	202 81:18	60,000 64:6,16 85:2
21:20 26:13 64:17	\$77,204.50 82:7	1975 8:4,10 18:21	21st 31:19 76:1	7
74:11 86:20	0	1983 20:21 36:7	23 13:20 14:24 15:16,22 66:1	7 70:5
writing 78:20	08 68:2	1986 9:15 47:25 48:13 52:1	23,400 52:1	7th 70:9 72:24 73:13,24
written 20:10,15 40:12 63:11	1	1987 34:3	23,900 48:4 49:10	75 18:24
wrong 81:16 83:5	1 20:19 52:7 58:4	1994 51:18	239 4:24	757 88:21
wrote 94:13	1st 68:21 109:24	1996 39:4,16 42:19 44:16,25	24 34:14 54:19	8
X	1/13/09 3:12	1997 39:17 42:21	25,500 51:25	8 70:8,12,18 72:22
X 3:1	1:10 112:20	2	27 73:10 75:20,23	83204 2:23
Y	10 19:25 73:1	2 34:1 35:21	27th 36:7	83204-1391 2:14
yeah 55:6 92:3 96:20	10th 9:20 112:8	2nd 20:21	29 74:1,7	836 88:23
year 9:20 31:13	10/20/08 3:11	20 27:21 30:21	3	83701-1617 2:19
45:5,5 48:5 50:11	10:10 2:4	20th 65:19 92:12 93:1	3 47:19,22 48:14 50:20 51:21	86 34:4
53:21 59:6 60:7	103 82:7	2000 40:1,7 41:22 41:25 42:21 43:11	3rd 92:14,18 94:8 94:12 95:18	9
60:17 63:2,3 64:5	104 81:23	46:21	30th 74:5	9/6/46 4:25
64:6,11 65:5	109 3:6	2001 100:5	303 82:22	92 3:11,12,13,14
68:21 69:9,10,18	11 77:12,25 79:4,13 81:12,21 83:20	2002 70:8,9 71:16 72:24 73:14,24	33 3:9 38:8,11,22 41:14	95 54:11
69:21,23 90:21	101:17,18 102:19	74:5 76:1 78:4,9 84:15	34 3:10 68:4 112:19	96 45:20
91:14,21	112 3:10	2004 15:3 66:5	35 3:11 92:6,11,25	967 2:22
years 6:24 10:22	12 37:10 79:6 81:17 103:10,25 106:1	2005 15:3	36 3:12 92:6,16 93:22	97 3:5 39:8,25 40:7
13:10 15:3 16:12	12,000 52:15 53:21 64:5 85:1 91:5	2006 14:1,14 15:3 97:24	37 3:13 92:6,18 94:12 95:17	
16:19 17:2 19:20	1200 63:22	2007 14:1,14 15:3 52:7 56:18 57:3	38 3:9,14 92:6,13 92:19	
19:25 42:10,12,13	13 79:9 104:8	57:24 58:4 59:11	4	
42:21 51:20 83:25	13th 73:14 92:17 93:13,21	66:5 68:22 78:7,9 91:4 109:24 110:6 111:19	4 3:4 51:15	
90:22 91:14	1391 2:13	2008 6:16 13:24 14:2 15:23 18:3	4/10/2009 67:16	
110:12	14 1:17 2:5 79:10 83:9,14 87:25	26:9 31:19 62:17	4/3/09 3:13	
yesterday 107:16	14th 34:3 83:21	65:17 67:4,12,19 67:23 92:12 93:1	427,500 81:19 83:9 87:23	
\$	146 54:23,25	2009 1:17 2:5 9:20 26:24 63:2 65:20	48 55:14	
\$12,000 23:19	147 54:23 55:5	67:19 69:13 83:21 92:14,18,18,20	484 88:19	
\$18,000 109:21	148 54:23		5	
\$18,153.84 82:22 83:10	15 54:25 83:18		5 52:6 68:22	
\$21,375 82:11	16 31:18 34:3 54:25		5th 9:15 34:4	
\$235,000 73:3	1603 8:21		5,000 54:21 64:24	
\$26,251.37 44:25	1617 2:18		5/18/09 3:14	
\$332,141.66 81:24	17 54:12 88:17		52,500 82:15	
\$372,740 72:25	18 88:18			
\$400,000 84:21				
\$427,500 79:14				
\$438,376 83:22				

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BANNOCK

DALLAS BEUS, individually;)
DOUG BEUS, individually,)
Plaintiffs,)

COPY

vs.

) Case No. CV-09-1822-OC

JOHN C. SOUZA, Trustee of)
the Lynn G. Beus Trust;)
JERRY BEUS, individually,)
Defendants.)

_____)

DEPOSITION OF MAX HEMMERT

JULY 7, 2009

REPORTED BY:

RODNEY FELSHAW, C.S.R. No. SRT-99

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BANNOCK

DALLAS BEUS, individually;)
DOUG BEUS, individually,)
Plaintiffs,)
vs.) Case No. CV-09-1822-OC
JOHN C. SOUZA, Trustee of)
the Lynn G. Beus Trust;)
JERRY BEUS, individually,)
Defendants.)

DEPOSITION OF MAX HEMMERT
JULY 7, 2009

REPORTED BY:
RODNEY FELSHAW, C.S.R. No. SRT-99
Notary Public

I EX

TESTIMONY OF MAX HEMMERT

PAGE

Examination by Mr. Budge

4

EXHIBITS

No. 31 Tax returns and depreciation 25

schedules.

(Exhibit retained by Mr. Budge.)

1 THE DEPOSITION OF MAX HEMMERT was taken
2 on behalf of the Plaintiffs at the offices of
3 Racine, Olson, Nye, Budge & Bailey, 201 East
4 Center, Suite 2A, Pocatello, Idaho, commencing at
5 1:30 p.m. on July 7, 2009, before Rodney Felshaw,
6 Certified Shorthand Reporter and Notary Public
7 within and for the State of Idaho, in the
8 above-entitled matter.

APPEARANCES:

10 For the Plaintiffs:
11 RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED
12 BY MR. RANDALL C. BUDGE
13 P.O. Box 1391
14 Pocatello, Idaho 83204-1391
15 For Defendant Jerry Beus:
16 HAWLEY, TROXELL, ENNIS & HAWLEY LLP
17 BY MR. STEPHEN C. SMITH
18 877 Main Street, Suite 1000
19 P.O. Box 1617
20 Boise, Idaho 83701-1617
21 Also Present: Lamont Jones
22 Dallas Beus
23 Doug Beus
24 Jerry Beus

1 MAX HEMMERT,
2 first duly sworn to tell the truth relating to
3 said cause, testified as follows:

5 MR. BUDGE: Let the record reflect that
6 this is the time and place for the deposition of
7 Max L. Hemmert and that he's appearing pursuant
8 to notice of taking deposition and a subpoena
9 duces tecum in this case.

10 Also present is, in addition to
11 myself, Randy Budge, representing the plaintiffs,
12 are the plaintiffs Dallas and Doug Beus.
13 Defendant Jerry Beus and his attorney Steve Smith
14 are present.

EXAMINATION

BY MR. BUDGE:

18 Q. Max, would you state your full name
19 and address for the record.

20 A. Max L. Hemmert. 141 Soda Creek Drive,
21 Soda Springs, Idaho.

22 Q. And what is your date of birth?

23 A. [REDACTED]

24 Q. Max, have you had your deposition
25 taken before?

1 A. No.

2 Q. Have you been involved in any
3 litigation before?

4 A. No.

5 Q. Let me just make a couple of
6 preliminary comments. The purpose of your
7 deposition is basically to find out what
8 information you may have and what facts you may
9 have that's relative to this pending litigation
10 that's going on between the Beuses over the
11 disposition of their father's estate and trust and
12 the ranch property that was held in trust.

13 How a deposition works is I will ask
14 you questions and you'll have to give me an oral
15 response. The court reporter here will type all
16 of that up into a booklet form. Then, when we're
17 done, he will provide a copy of that to you so you
18 can look it over and make any corrections that may
19 be necessary. And he'll ask you to sign it and
20 send it back. Copies will also be provided to the
21 parties here. And it can be used in a court
22 proceeding down the road. It can be filed with
23 the court to present what your testimony was
24 today.

25 During the course of the deposition

1 the reporter can't pick up nods of yes or no, so
2 you'll have to answer orally. As we go through
3 the deposition, I'll try not to interrupt any of
4 your answers and you please make sure I finish my
5 question before you answer, because it's hard for
6 the reporter to pick it up if we talk on top of
7 each other. Is that okay?

8 A. Uh-huh. Yeah.

9 Q. First, I appreciate you coming down to
0 have your deposition today. I apologize for the
1 mix up last week on the date and time.

2 Is there anything, Max, about your
3 physical or mental health today that would -- that
4 we should be aware of before we take your
5 deposition?

6 A. I don't think so. I'm all right, I
7 believe.

8 Q. You're healthy?

9 A. I'm healthy. Old, but that's about
0 it.

1 Q. I just want to be aware of anything
2 because if during the course of the deposition you
3 need to take a break for a drink of water or use
4 the restroom, just say so and we'll go off the
5 record.

1 A. Okay.

2 Q. For the purpose of your deposition,
3 let me just ask you a few general questions. Can
4 you give me a brief summary of your educational
5 background starting with high school?

6 A. I graduated from Montpelier High
7 School in 1963. I went into the service and came
8 out and went to two semesters at the University of
9 Utah. I finished my associate degree at Steven's
10 Henager Business College in 1974.

11 Q. What was the degree from Steven's
12 Henager?

13 A. Professional accounting degree.

14 Q. I think that's in Salt Lake, right?

15 A. Yeah, right.

16 Q. And give me a brief summary of your
17 work experience as an accountant.

18 A. Hmm, I worked for Walker Bank in Salt
19 Lake City from 1969 to 1974 in the computer
20 operations as their accountant. In 1974 I
21 graduated from Steven's Henager and moved back to
22 Montpelier, Idaho. From there I worked with my
23 father-in-law as an accountant at Becker Industry.
24 From there I went to work for Mark 3 in Soda
25 Springs as their accountant. I did that for 12

1 years, I believe. After that I worked for
2 Security State Incorporated as their auditor.

3 Q. That's Security State Bank?

4 A. Uh-huh. For six years there. And
5 then I worked for Dawn Enterprises in Blackfoot,
6 Idaho as their accountant for one year. And I
7 worked for Mullin Crane and Transport from 1990 to
8 '93 as their accountant. And then in 1995 I
9 started working for the Soda Springs School
10 District as their clerk and business manager until
11 present.

12 Q. Is that full-time work with the school
13 district?

14 A. Yes.

15 Q. And then do you also have private
16 practice accounting work that you do on the side?

17 A. Yes. After I graduated from Steven
18 Henager I started doing taxes and people's books
19 in 1974 in Salt Lake -- 1970 in Salt Lake City.
20 And I did taxes down there for four years and then
21 moved back to Idaho and did taxes and books and
22 payroll on my own as Hemmert Accounting for the
23 last 35 years.

24 Q. As part of the papers that were sent
25 to you, Max, there was a subpoena duces tecum that

1 asked you to bring whatever records you had in
2 your possession pertaining to tax returns,
3 accounting, bookkeeping, the like, that was done
4 for Jerry Beus, Beth Beus, or the Lynn G. Beus
5 Trust from 1986 to date, including tax returns,
6 financial statements, correspondence, notes and
7 the like.

8 Before I ask you about that, have you
9 done any work for Beth Beus?

10 A. No.

11 Q. Any work for the Lynn G. Beus Trust?

12 A. No.

13 Q. So only Jerry Beus?

14 A. Only Jerry.

15 Q. And did you bring your files and
16 records as requested pertaining to Jerry Beus?

17 A. I brought them from 1996 through 2007,
18 with the exception of I didn't bring any for 2000,
19 2001, 2002, 2003. And I just brought some
20 paperwork on 2004 and 2005 and 2006. I've got
21 2007. We did an extension on 2008.

22 Q. So basically you brought copies of the
23 tax returns that you prepared for Jerry Beus?

24 A. Correct.

25 Q. And would all of those returns have

1 would bring the information in and you would
2 prepare the return based upon that and then
3 deliver them back to him and he would sign it and
4 file both the state and federal returns?

5 A. Correct.

6 Q. And then in the normal course of your
7 business you maintained a copy of what you
8 prepared for Jerry?

9 A. Correct.

10 Q. And did you maintain any of the
11 records or other information that he brought to
12 you which formed the underlying basis of the
13 returns?

14 A. No.

15 Q. What happened to that information?

16 A. That information was given back to
17 Jerry. Most of the information was on a spread
18 sheet that he got off his computer and I used
19 those figures. That figure is what is
20 incorporated in the tax return.

21 Q. When you say it was on a spread sheet,
22 was that a computer generated spread sheet that
23 Jerry would typically bring to you that summarized
24 his receipts and expenditures?

25 A. Yes.

1 been prepared based upon information that Jerry
2 Beus supplied to you?

3 A. Correct.

4 Q. And to your knowledge, did that
5 information that he provided and is reflected in
6 the returns, reflect all of the income and
7 expenses and the like pertaining to his farming
8 operation?

9 A. Correct.

10 Q. There isn't any information that you
11 gathered on your own to prepare the returns, you
12 just relied on what he produced for you?

13 A. Correct.

14 Q. And then as you prepared the returns
15 were they signed by you as well as Jerry?

16 A. Correct.

17 Q. And did you file them for him or did
18 you provide them to him to file?

19 A. You mean to send them off?

20 Q. Yes.

21 A. He sent them off. I gave them to him
22 to send off. Everything was packaged up to both
23 the IRS and to the state tax commission in their
24 envelopes, which he mailed.

25 Q. Okay. So just to sum it up, Jerry

1 Q. And did you know the source of the
2 information for those spread sheets?

3 A. No, sir.

4 Q. Did you understand that to be taken
5 from his bank records?

6 A. Yes, sir.

7 Q. And was it compiled by someone else or
8 was it compiled by Jerry?

9 A. I have no idea. I don't know. I'm
10 sure it was compiled by his bookkeeper who did his
11 books, but I don't know that for certain.

12 Q. You didn't do any of the bookkeeping
13 work?

14 A. No.

15 Q. Let me get back and make sure I
16 understand what you have. You prepared his
17 returns for the years 1996 through 2007?

18 A. I prepared Jerry's returns since
19 probably 1980. I believe that's when I started.

20 Q. And every year since then you've done
21 his returns?

22 A. Yes.

23 Q. And were basically the returns in each
24 year handled the way we've discussed, generally?

25 A. No. I believe in the beginning years

1 Jerry brought me -- before he had a computer Jerry
2 brought me his bank book and I did it off of his
3 bank book. And the income was always taken by his
4 bank -- his deposits and the items that we got
5 from the federal government, the monies that he
6 received from them.

7 Q. Let me have you again clarify which
8 returns you brought. Did I understand you to say
9 you brought copies of the returns for 1996 through
10 2007?

11 A. No. I brought 1996, '97, '98, '99 and
12 2007.

13 Q. Okay.

14 A. And the 2004, 2005, 2006 I brought a
15 sheet showing the depreciation and the
16 miscellaneous expenses and that's about it.
17 That's all I brought for those years. I do have
18 copies of those in my computer, it's just a matter
19 of pulling them off.

20 Q. And the sheet for the years 2004,
21 2005, 2006, what is the information reflected on
22 the sheet?

23 A. It shows the depreciation schedule,
24 what was in there, assets for that year, seven
25 year property on that that we took off, and some

1 carry over from each year. And then one year I
2 put in some miscellaneous expenses and total other
3 expenses on 2005 and 2006 and 2004. That's what
4 is incorporated on this sheet. There's no income,
5 no nothing else.

6 Q. And the purpose of those sheets for
7 those years, 2004 through 2006, would be to
8 identify any assets that were being depreciated?

9 A. Correct.

10 Q. So we don't duplicate our documents
11 here, I'm handing you a binder that reflects the
12 various exhibits we've been going through in some
13 of the prior depositions. I'd like you to take a
14 moment, if you would, and take a look at exhibit
15 21, which appears to be the 2004 1040 tax return;
16 and also exhibit 22, which is the 2007 tax return.

17 A. 2004 and 2007?

18 Q. Yeah. Just see if you recognize those
19 as the returns that you would have prepared for
20 Jerry in those years?

21 A. Yes, sir, they are.

22 Q. Let's look first at exhibit 21, the
23 2004 return. On page two at the bottom it says
24 self prepared.

25 A. That was -- I don't know what happened

1 there. My program, I don't put my name there,
2 automatically puts self prepared. But they were
3 prepared by myself.

4 Q. Okay. And looking at that 2004
5 return, it contains -- besides the federal return
6 and state return, there are some attachments at
7 the end which are called Quick Book report by
8 category. There's several pages of those. Is
9 that the type of computer generated information
10 that Jerry would provide to you for purposes of
11 preparing the return?

12 A. Correct.

13 Q. And would that be all of the
14 information he provided and you were able to
15 prepare the return based upon that?

16 A. The only thing that's not in here that
17 is in this report is the depreciation is
18 automatically carried over from one year to the
19 next. The only thing that's not in that
20 depreciation schedule is what he would give me and
21 it's not on any schedule. Like on page two of
22 that form 4562, it shows the depreciation of 33
23 cows and 74 yearlings. That's what happened on
24 that year. But the actual form 4562 is carried
25 over from year to year.

1 Q. Okay. Looking at that 2004 return, on
2 page three do you see the schedule F there?

3 A. Yes, sir.

4 Q. And line four, entitled sales of
5 livestock, produce, grain and other produce, has a
6 total of 169,760. How would you arrive at that
7 information from the Quick Book sheets that he
8 provided? If you'll look at the Quick Book report
9 where it has a category under column four, it
10 shows whether it's income, loan, sales, or the
11 like. Is that how you would then be able to
12 compile that information and reflect it in the
13 return?

14 A. Correct.

15 Q. Looking on that same schedule F, under
16 page 16 we have depreciation and it shows a number
17 of 26,428. Do you see that?

18 A. Yes, sir.

19 Q. And can one identify the source of
20 that number by looking at the next page, the form
21 4562 that lists depreciation?

22 A. Yes, sir.

23 Q. And are you able to tell by looking at
24 that depreciation schedule what property it is
25 that it being depreciated?

1 A. By that schedule, no, I can't tell you
2 what the property is.

3 Q. How would one determine whether in
4 that depreciation amount there is any number in
5 there for improvements that would have been made
6 such as granaries or buried main line? Would you
7 have any way to determine that?

8 A. No, not by looking at this.

9 Q. Okay. And if Jerry were to construct
10 some granaries on the property, or install a
11 buried main line, would those be reflected as
12 items that are depreciated on a schedule or would
13 they be expensed out on the tax return?

14 A. It depends on what the dollar amount
15 was and what the government says you can
16 depreciate out of that.

17 Q. Okay. Are you aware, and look at the
18 returns if you need to, from 2007 on -- let's jump
19 over to exhibit 22, the 2007 return that you
20 prepared. When I look in schedule F, item 16,
21 there's no amount shown for depreciation. Would
22 that indicate that there was nothing on the
23 depreciation schedule that year?

24 A. No. That wouldn't make -- that would
25 indicate that my computer, or something happened,

Page 18

1 to not bring that figure forward from 2006. And
2 the only thing I can say is because of the amount
3 of total expenses that was on there, when it came
4 down to minus \$73, I didn't go back and look to
5 see what happened with the depreciation. There
6 was no money, you know --

7 Q. Because he was operating at a loss and
8 didn't owe any taxes to the government and so it
9 didn't matter if you came up with additional
10 depreciation?

11 A. Yeah. At that particular time, or
12 most of the time, Mr. Beus would bring me the
13 taxes towards the end of March or the first of
14 April and we wanted to get them done. I'm sure
15 that something happened with my computer or
16 something is why it didn't take this figure
17 forward.

18 I know what happened. In 2007 I purchased
19 a new computer and it didn't -- I didn't put 2006
20 on my computer that I bought. So 2006 would have
21 not carried over to my 2007.

22 Q. If there was a reason for him to take
23 the depreciation on 2007 you would have had to go
24 back manually and pull the number out and insert
25 it in?

1 A. Correct.

2 Q. In the preparation of these returns
3 we've been discussing, or any of the others you
4 prepared, did you ever actually see any of
5 Jerry's' bank statements or canceled checks, his
6 checkbook ledger or expense receipts, anything of
7 that nature, the underlying documents that
8 supported the Quick Book sheets that he provided
9 you?

10 A. When he started using Quick Books, no.
11 I used all of the figures from Quick Books.

12 Q. What about in some of the earlier
13 years when you indicated he would bring in
14 information?

15 A. In some of the earlier years I looked
16 at the checks and the deposits.

17 Q. Okay.

18 A. That's how I pulled the deposits off
19 was off of his deposit slips.

20 Q. And in making a determination of what
21 expenses are capital costs and what are to be
22 depreciated, do you rely upon the guidelines that
23 the IRS provides?

24 A. Correct.

25 Q. Are you able to tell, by reviewing any

Page 20

1 of your records, Max, whether or not Jerry had on
2 any of his tax returns a depreciation relating to
3 the cost he incurred of building the granaries on
4 the property?

5 A. I don't recall of anything like that.
6 I mean, it could be that the amount that's on that
7 depreciation schedule for the 15,000 could be, but
8 at this particular time I can't tell you what that
9 is.

10 Q. What about any improvements in recent
11 years from 2007 on, do you recall any
12 improvements, such as a buried main line, that
13 would have been reflected?

14 A. No.

15 Q. I think you said he hasn't yet filed
16 the 2008 return?

17 A. Correct.

18 Q. And an extension has been obtained and
19 that will then be due in September, September
20 15th?

21 A. August 15th.

22 Q. August?

23 A. I believe it's August 15th.

24 Q. And has he provided you the
25 information to enable you to prepare the 2008

1 return due August 15th?

2 A. As of this time, no.

3 Q. Do you have any knowledge or
4 recollection of when Jerry would have sold off his
5 livestock? I'm looking at exhibit 21 under the
6 attached form 4562, depreciation amortization.
7 You can see he's reflecting there 33 cows and 74
8 yearlings?

9 A. Okay.

10 Q. Does that indicate that those cattle
11 were -- that livestock was still being depreciated
12 is why you reflected them on the 2004 return?

13 A. That would have meant that in 2004 --
14 Okay. That would have indicated on that
15 particular thing that he purchased 33 cows and 74
16 yearlings in 1993.

17 Q. And then what about returns
18 afterwards? Can you see on returns afterwards
19 where those cows and yearlings were no longer
20 existing, indicating they'd been sold? The reason
21 I ask this question, there's some uncertainty from
22 the prior deposition of Jerry as to when he sold
23 off his livestock. He had sheep and he had
24 cattle, both cows and yearlings. At some point in
25 time he sold off all of his livestock and has been

1 simply a grain operation since. I wanted to ask
2 you if you are able to look at your returns and
3 provide us some guidance to say at what point in
4 time he may have sold off the sheep and cattle?

5 A. The only way I would have an answer to
6 that particular question is if it showed up in his
7 income.

8 Q. Okay. Can you take a moment and look
9 at the returns that you have, either the 2004 or
10 2007 or the other returns you have, and see if you
11 can find anything that would give some indication
12 of when his livestock may have been sold off?

13 A. Well, in 1/16/04 he sold off some
14 cattle and cows for \$17,000.

15 Q. What are you referring to to identify
16 that?

17 A. Page one of the 2004 return on the
18 Quick Book category of income.

19 Q. And what amount?

20 A. \$17,338.65.

21 Q. While we're on that same 2004
22 return -- excuse me. Strike that. You're still
23 looking further to see if you can see other cattle
24 sales?

25 A. Uh-huh.

1 Q. Okay. Take a moment and do that.

2 A. (Witness complied.)

3 Q. From your review of the 2007 return is
4 there anything there that indicates he had cattle
5 sold in '07?

6 A. I don't know if I can see an income
7 off the Quick Books. The income portion of the
8 Quick Books is not attached so I can't tell you on
9 2007.

10 Q. Before we leave the 2007 return, let's
11 look at those Quick Book reports.

12 A. And 2007 on the profit and loss,
13 schedule F, it says sales of livestock and other
14 items bought for resale, \$12,000. But I don't
15 know what that \$12,000 is. I mean, it's some type
16 of livestock, but I can't match that up because I
17 don't see the schedule.

18 Q. On that 2007 return that we're looking
19 at, on the Quick Book reports, if you would turn
20 to the very end of those, and these pages are all
21 numbered the same so it's difficult to separate,
22 but if you'll turn four pages from the end,
23 there's a category that's entitled L and P fees.
24 What does that represent?

25 A. Legal and professional fees.

1 Q. And so those amounts that are
2 reflected there in 2007, you see payments to John
3 Souza and James Allrick and Clyde Nelson, those
4 would all be considered legal fees that would have
5 been expensed that year?

6 A. Yes, sir. If you look on the schedule
7 F there's professional fees of 2286 corresponding
8 to the 2286 other expenses.

9 Q. So it was reflecting, according to
10 that Quick Book ledger, that in 2007 Jerry had
11 paid to John Souza some \$1,250; to James Allrick
12 \$406; and to Clyde Nelson, \$44. Those would be
13 various legal fees that would then be reflected on
14 the return?

15 A. Correct.

16 Q. Let's go back to the page immediately
17 before that. This is a category that says lease
18 on it. Does that reflect all of the lease
19 payments that were made that year?

20 A. Correct.

21 Q. And there are a number of them that
22 were paid to Beth Beus. Did you understand these
23 to be direct farm lease payments that were made to
24 Beth?

25 A. No. I mean, I wouldn't know that.

1 This just reported leases.

2 Q. So Jerry would give you this
3 particular page that's categorized as lease and
4 you just reflected that all as a lease expense?

5 A. Correct.

6 Q. And you simply would take the total of
7 those and reflect it on the return?

8 A. Correct.

9 Q. As far as knowing who the payments
10 were made to, Beth Beus or Pauline Stoddard or the
11 BLM, that's not anything you would know about or
12 be concerned with?

13 A. Correct.

14 MR. BUDGE: Let's go off the record for a
15 minute. Let me see what you've got there.

16 (Recess.)

17 (Exhibit 31 marked.)

18 Q. (BY MR. BUDGE) Let me ask you a few
19 questions.

20 A. I just made a copy. Those are not
21 originals.

22 Q. Oh. Okay. Max, what we've marked as
23 exhibit 31 are copies of the returns that we've
24 been discussing that you prepared for '96, '97,
25 '98 and '99. Then you have a sheet that reflects

1 A. Cor...

2 Q. So you wouldn't have any of his
3 records?

4 A. No.

5 Q. Nor any correspondence with Jerry or
6 his attorneys or anything like that?

7 A. No.

8 Q. Have you had any involvement with John
9 Souza, the trustee of the Lynn G. Beus Trust?

10 A. No.

11 Q. Any involvement with Jerry's former
12 attorney, Clyde Nelson, with respect to any of the
13 tax work you've done?

14 A. No.

15 Q. I suppose you've not been involved at
16 all in giving Jerry advice with respect to the
17 listing of the ranch for sale and the tax
18 implications of any sale?

19 A. No.

20 Q. Do you have any work you're doing with
21 Jerry with respect to other litigation that he's
22 involved in?

23 A. No.

24 Q. Have you had any familiarity with or
25 did you do any accounting or tax work pertaining

1 depreciation information for the years 2004, 2005
2 and 2006; is that correct?

3 A. Correct.

4 Q. We'll identify those as exhibit 31.

5 This would be the total of all of the documents
6 that you brought with you and all that you have in
7 your possession, other than information that's in
8 your computer that you couldn't generate readily?

9 A. All that I have, no. I mean --

10 Q. You have the prior years' returns?

11 A. All the ones I've kept. I think I can
12 go back and find all of them, but I don't know
13 that. I don't want to tell you I have those and
14 then not have them.

15 Q. These are what you've produced that is
16 in exhibit 31?

17 A. Yes.

18 Q. You may have some returns from prior
19 years and if we need them we can come back and
20 look at those?

21 A. We can try.

22 Q. With respect to all of the tax
23 returns, whatever information was provided to you
24 by Jerry to prepare the returns was returned to
25 him?

1 to the Lynn G. Beus estate or the trust?

2 A. No.

3 Q. Have you been involved in any of the
4 leases that Jerry has entered into with the trust
5 pertaining to the Beus Ranch?

6 A. No.

7 Q. You don't have copies of any of that
8 or you didn't consult with him in determining the
9 amount of the rent or anything of that nature?

10 A. No.

11 Q. Did you have any involvement with
12 Jerry with respect to his loans from Ireland Bank?

13 A. No.

14 Q. When you prepared the tax returns,
15 would you have reported any interest that he may
16 have paid on any of his bank loans?

17 A. Yes.

18 Q. And would that be reported as a
19 deduction on his return?

20 A. Yes.

21 Q. And would the source of the
22 information be 1099s he receives from the bank,
23 form 1099s?

24 A. Correct.

25 Q. How would you get that information?

1 A. From the 1099s. Or the 1099s, aren't
2 they?
3 Q. 1098. Okay. Are you aware in recent
4 years that Jerry refinanced and moved from Ireland
5 Bank to DBL?
6 A. No.
7 Q. You don't have any knowledge
8 concerning the promissory note to DBL in 2007?
9 A. No.
10 Q. I guess if you haven't done the -- on
11 the 2007 return that has been prepared, would
12 there have been an interest statement that was
13 received from either DBL or Caribou Title?
14 A. In 2007?
15 Q. Yes.
16 A. I can remember seeing the one from
17 Caribou Title. I don't remember using one from
18 DBL.
19 Q. And can you look at the 2007 return
20 and be able to determine whether or not interest
21 deduction was taken relative to interest paid by
22 Jerry Beus, which would have been reported to you
23 by Caribou Title?
24 A. On item 23, interest mortgage paid to
25 banks, that's interest on those mortgages.

1 Q. What would the amount shown there be?
2 A. 35,539.
3 MR. BUDGE: Let's go off the record a
4 moment.
5 (Off the record.)
6 Q. (BY MR. BUDGE) Back on the record.
7 Have you had any communications or advice with
8 Jerry or anyone else concerning the listing and
9 sale of the ranch?
10 A. No.
11 MR. BUDGE: Okay. Let's go off the record
12 again. Let me get a copy of these made. I think
13 that's all I have for you.
14 MR. SMITH: I don't have any questions.
15 MR. BUDGE: I guess you don't really need
16 these copies back?
17 THE WITNESS: No.
18 MR. BUDGE: Okay. That's all.
19 (Deposition concluded at 2:30 p.m.)
20 (All exhibits retained by Mr. Budge.)
21 (Signature requested.)
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REPORTER'S CERTIFICATE

I, Rodney Felshaw, CSR No. SRT-99,
Certified Shorthand Reporter, certify:

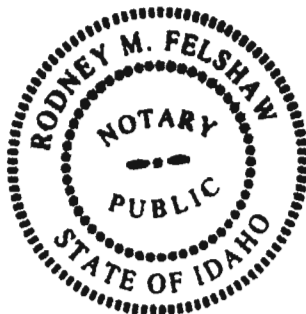
That the foregoing proceedings were taken
before me at the time and place therein set forth,
at which time the witness was put under oath by
me.

That the testimony and all objections made
were recorded stenographically by me and
transcribed by me or under my direction.

That the foregoing is a true and correct
record of all testimony given, to the best of my
ability.

I further certify that I am not a relative
or employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 17th day of July, 2009.



Rodney Felshaw

Rodney Felshaw, CSR NO. SRT-99

Notary Public

Brigham City, UT 84302

My commission expires March 31, 2015

<p>A</p> <p>able 15:14 16:11,23 19:25 22:2 29:20</p> <p>above-entitled 2:8</p> <p>accountant 7:17,20 7:23,25 8:6,8</p> <p>accounting 7:13 8:16,22 9:3 27:25</p> <p>actual 15:24</p> <p>addition 4:10</p> <p>additional 18:9</p> <p>address 4:19</p> <p>advice 27:16 30:7</p> <p>Alldrick 24:11</p> <p>Allrick 24:3</p> <p>amortization 21:6</p> <p>amount 17:4,14,21 18:2 20:6 22:19 28:9 30:1</p> <p>amounts 24:1</p> <p>answer 6:2,5 22:5</p> <p>answers 6:4</p> <p>apologize 6:10</p> <p>APPEARANCES 2:10</p> <p>appearing 4:7</p> <p>appears 14:15</p> <p>appreciate 6:9</p> <p>April 18:14</p> <p>arrive 16:6</p> <p>asked 9:1</p> <p>assets 13:24 14:8</p> <p>associate 7:9</p> <p>attached 21:6 23:8</p> <p>attachments 15:6</p> <p>attorney 4:13 27:12</p> <p>attorneys 27:6</p> <p>auditor 8:2</p> <p>August 20:21,22,23 21:1</p> <p>automatically 15:2 15:18</p> <p>aware 6:14,21 17:17 29:3</p>	<p>18:4,24 24:16 26:12,19 30:6,16</p> <p>background 7:5</p> <p>Bailey 2:3,12</p> <p>bank 7:18 8:3 12:5 13:2,3,4 19:5 28:12,16,22 29:5</p> <p>banks 29:25</p> <p>BANNOCK 1:3</p> <p>based 10:1 11:2 15:15</p> <p>basically 5:7 9:22 12:23</p> <p>basis 11:12</p> <p>Becker 7:23</p> <p>beginning 12:25</p> <p>behalf 2:2</p> <p>believe 6:17 8:1 12:19,25 20:23</p> <p>Beth 9:4,9 24:22,24 25:10</p> <p>Beus 1:5,6,10,11 2:16,23,24,25 4:12,13 9:4,4,4,9 9:11,13,16,23 10:2 18:12 24:22 25:10 27:9 28:1,5 29:22</p> <p>Beuses 5:10</p> <p>binder 14:11</p> <p>birth 4:22</p> <p>Blackfoot 8:5</p> <p>BLM 25:11</p> <p>Boise 2:21</p> <p>book 13:2,3 15:7 16:7,8 19:8 22:18 23:11,19 24:10</p> <p>bookkeeper 12:10</p> <p>bookkeeping 9:3 12:12</p> <p>booklet 5:16</p> <p>books 8:18,21 12:11 19:10,11 23:7,8</p> <p>bottom 14:23</p> <p>bought 18:20 23:14</p> <p>Box 2:14,20</p> <p>break 6:23</p>	<p>brief 7:4,16</p> <p>bring 9:1,15,18 11:1,23 18:1,12 19:13</p> <p>brought 9:17,19,22 11:11 13:1,2,8,9 13:11,14,17 26:6</p> <p>Budge 2:3,12,13 3:4,10 4:5,11,17 25:14,18 30:3,6 30:11,15,18,20</p> <p>building 20:3</p> <p>buried 17:6,11 20:12</p> <p>business 7:10 8:10 11:7</p> <p>C</p> <p>C 1:9 2:13,18</p> <p>called 15:7</p> <p>canceled 19:5</p> <p>capital 19:21</p> <p>Caribou 29:13,17 29:23</p> <p>carried 15:18,24 18:21</p> <p>carry 14:1</p> <p>case 1:8 4:9</p> <p>categorized 25:3</p> <p>category 15:8 16:9 22:18 23:23 24:17</p> <p>cattle 21:10,24 22:4 22:14,23 23:4</p> <p>cause 4:3</p> <p>Center 2:4</p> <p>certain 12:11</p> <p>Certified 2:6</p> <p>CHARTERED 2:12</p> <p>checkbook 19:6</p> <p>checks 19:5,16</p> <p>City 7:19 8:19</p> <p>clarify 13:7</p> <p>clerk 8:10</p> <p>Clyde 24:3,12 27:12</p> <p>College 7:10</p> <p>column 16:9</p>	<p>come 26:19</p> <p>coming 6:9</p> <p>commencing 2:4</p> <p>comments 5:6</p> <p>commission 10:23</p> <p>communications 30:7</p> <p>compile 16:12</p> <p>compiled 12:7,8,10</p> <p>complied 23:2</p> <p>computer 7:19 11:18,22 13:1,18 15:9 17:25 18:15 18:19,20 26:8</p> <p>concerned 25:12</p> <p>concerning 29:8 30:8</p> <p>concluded 30:19</p> <p>considered 24:4</p> <p>construct 17:9</p> <p>consult 28:8</p> <p>contains 15:5</p> <p>copies 5:20 9:22 13:9,18 25:23 28:7 30:16</p> <p>copy 5:17 11:7 25:20 30:12</p> <p>correct 9:24 10:3,9 10:13,16 11:5,9 14:9 15:12 16:14 19:1,24 20:17 24:15,20 25:5,8 25:13 26:2,3 27:1 28:24</p> <p>corrections 5:18</p> <p>correspondence 9:6 27:5</p> <p>corresponding 24:7</p> <p>cost 20:3</p> <p>costs 19:21</p> <p>COUNTY 1:3</p> <p>couple 5:5</p> <p>course 5:25 6:22 11:6</p> <p>court 1:1 5:15,21 5:23</p> <p>cows 15:23 21:7,15 21:19,24 22:14</p>	<p>Crane 8:7</p> <p>Creek 4:20</p> <p>CV-09-1822-OC 1:8</p> <p>C.S.R 1:20</p> <p>D</p> <p>D 3:1</p> <p>Dallas 1:5 2:23 4:12</p> <p>date 4:22 6:11 9:5</p> <p>Dawn 8:5</p> <p>DBL 29:5,8,13,18</p> <p>deduction 28:19 29:21</p> <p>Defendant 2:16 4:13</p> <p>Defendants 1:12</p> <p>degree 7:9,11,13</p> <p>deliver 11:3</p> <p>depends 17:14</p> <p>deposit 19:19</p> <p>deposition 1:16 2:1 4:6,8,24 5:7,13,25 6:3,10,15,22 7:2 21:22 30:19</p> <p>depositions 14:13</p> <p>deposits 13:4 19:16 19:18</p> <p>depreciate 17:16</p> <p>depreciated 14:8 16:25 17:12 19:22 21:11</p> <p>depreciation 3:8 13:15,23 15:17,20 15:22 16:16,21,24 17:4,21,23 18:5 18:10,23 20:2,7 21:6 26:1</p> <p>determination 19:20</p> <p>determine 17:3,7 29:20</p> <p>determining 28:8</p> <p>difficult 23:21</p> <p>direct 24:23</p> <p>discussed 12:24</p> <p>discussing 19:3 25:24</p>
<p>B</p> <p>back 5:20 7:21 8:21 11:3,16 12:15</p>				

disposition 5:11
district 1:1,2 8:10
 8:13
documents 14:10
 19:7 26:5
doing 8:18 27:20
dollar 17:14
Doug 1:6 2:24 4:12
drink 6:23
Drive 4:20
duces 4:9 8:25
due 20:19 21:1
duly 4:2
duplicate 14:10

E

E 3:1
earlier 19:12,15
East 2:3
educational 7:4
either 22:9 29:13
enable 20:25
ENNIS 2:17
entered 28:4
Enterprises 8:5
entitled 16:4 23:23
envelopes 10:24
estate 5:11 28:1
Examination 3:4
 4:16
exception 9:18
excuse 22:22
exhibit 3:10 14:14
 14:16,22 17:19
 21:5 25:17,23
 26:4,16
exhibits 3:7 14:12
 30:20
existing 21:20
expenditures 11:24
expense 19:6 25:4
expensed 17:13
 24:5
expenses 10:7 13:16
 14:2,3 18:3 19:21
 24:8
experience 7:17
extension 9:21

20:18

F

F 16:2,15 17:20
 23:13 24:7
facts 5:8
familiarity 27:24
far 25:9
farm 24:23
farming 10:7
father's 5:11
father-in-law 7:23
federal 11:4 13:5
 15:5
fees 23:23,25 24:4,7
 24:13
Felshaw 1:20 2:5
figure 11:19 18:1
 18:16
figures 11:19 19:11
file 10:17,18 11:4
filed 5:22 20:15
files 9:15
financial 9:6
find 5:7 22:11
 26:12
finish 6:4
finished 7:9
first 4:2 6:9 14:22
 18:13
follows 4:3
form 5:16 15:22,24
 16:20 21:6 28:23
formed 11:12
former 27:11
forward 18:1,17
four 8:20 16:4,9
 23:22
full 4:18
full-time 8:12
further 22:23

G

G 1:10 9:4,11 27:9
 28:1
gathered 10:11
general 7:3
generally 12:24

generate 26:8
generated 11:22
 15:9
give 5:14 7:4,16
 15:20 22:11 25:2
given 11:16
giving 27:16
go 6:2,24 18:4,23
 24:16 25:14 26:12
 30:3,11
going 5:10 14:12
government 13:5
 17:15 18:8
graduated 7:6,21
 8:17
grain 16:5 22:1
granaries 17:6,10
 20:3
guess 29:10 30:15
guidance 22:3
guidelines 19:22

H

handing 14:11
handled 12:24
happened 11:15
 14:25 15:23 17:25
 18:5,15,18
hard 6:5
HAWLEY 2:17,17
health 6:13
healthy 6:18,19
held 5:12
Hemmert 1:16 2:1
 3:3 4:1,7,20 8:22
Henager 7:10,12,21
 8:18
he'll 5:19
high 7:5,6
Hmm 7:18

I

Idaho 1:2 2:4,7,15
 2:21 4:21 7:22 8:6
 8:21
idea 12:9
identify 14:8 16:19
 22:15 26:4

immediately 24:16
implications 27:18
improvements 17:5
 20:10,12
including 9:5
income 10:6 13:3
 14:4 16:10 22:7
 22:18 23:6,7
incorporated 8:2
 11:20 14:4
incurred 20:3
indicate 17:22,25
 21:10
indicated 19:13
 21:14
indicates 23:4
indicating 21:20
indication 22:11
individually 1:5,6
 1:11
Industry 7:23
information 5:8
 10:1,5,10 11:1,11
 11:15,16,17 12:2
 13:21 15:9,14
 16:7,12 19:14
 20:25 26:1,7,23
 28:22,25
insert 18:24
install 17:10
interest 28:15 29:12
 29:20,21,24,25
interrupt 6:3
involved 5:2 27:15
 27:22 28:3
involvement 27:8
 27:11 28:11
Ireland 28:12 29:4
IRS 10:23 19:23
item 17:20 29:24
items 13:4 17:12
 23:14

J

James 24:3,11
Jerry 1:11 2:16,25
 4:13 9:4,13,14,16
 9:23 10:1,15,25

11:8,17,23 12:8
 13:1,1 14:20
 15:10 17:9 20:1
 21:4,22 24:10
 25:2 26:24 27:5
 27:16,21 28:4,12
 29:4,22 30:8
Jerry's 12:18 19:5
 27:11
John 1:9 24:2,11
 27:8
Jones 2:22
JUDICIAL 1:1
July 1:17 2:5
jump 17:18

K

kept 26:11
know 12:1,9,11
 14:25 18:6,18
 23:6,15 24:25
 25:11 26:12
knowing 25:9
knowledge 10:4
 21:3 29:7

L

L 4:7,20 23:23
Lake 7:14,19 8:19
 8:19
Lamont 2:22
lease 24:17,18,23
 25:3,4
leases 25:1 28:4
leave 23:10
ledger 19:6 24:10
legal 23:25 24:4,13
let's 14:22 17:18
 23:10 24:16 25:14
 30:3,11
line 16:4 17:6,11
 20:12
listing 27:17 30:8
lists 16:21
litigation 5:3,9
 27:21
livestock 16:5 21:5
 21:11,23,25 22:12

23:13,16
LLP 2:17
loan 16:10
loans 28:12,16
longer 21:19
look 5:18 14:14,22
16:8 17:17,20
18:4 22:2,8 23:11
24:6 26:20 29:19
looked 19:15
looking 15:4 16:1
16:15,20,23 17:8
21:5 22:23 23:18
loss 18:7 23:12
Lynn 1:10 9:4,11
27:9 28:1

M
mailed 10:24
main 2:19 17:6,11
20:12
maintain 11:10
maintained 11:7
making 19:20
manager 8:10
manually 18:24
March 18:13
Mark 7:24
marked 25:17,22
match 23:16
matter 2:8 13:18
18:9
Max 1:16 2:1 3:3
4:1,7,18,20,24
6:12 8:25 20:1
25:22
mean 10:19 20:6
23:15 24:25 26:9
meant 21:13
mental 6:13
minus 18:4
minute 25:15
miscellaneous
13:16 14:2
mix 6:11
moment 14:14 22:8
23:1 30:4
money 18:6

monies 13:5
Montpelier 7:6,22
mortgage 29:24
mortgages 29:25
moved 7:21 8:21
29:4
Mullin 8:7

N
N 3:1
name 4:18 15:1
nature 19:7 28:9
necessary 5:19
need 6:23 17:18
26:19 30:15
Nelson 24:3,12
27:12
new 18:19
nods 6:1
normal 11:6
Notary 1:21 2:6
note 29:8
notes 9:6
notice 4:8
number 16:16,20
17:4 18:24 24:21
numbered 23:21
Nye 2:3,12

O
obtained 20:18
offices 2:2
Oh 25:22
okay 6:7 7:1 10:25
13:13 15:4 16:1
17:9,17 19:17
21:9,14 22:8 23:1
25:22 29:3 30:11
30:18
Old 6:19
Olson 2:3,12
ones 26:11
operating 18:7
operation 10:8 22:1
operations 7:20
oral 5:14
orally 6:2
originals 25:21

owe 18:8

P
P 23:23
packaged 10:22
page 3:3 14:23
15:21 16:2,16,20
22:17 24:16 25:3
pages 15:8 23:20,22
paid 24:11,22 28:16
29:21,24
papers 8:24
paperwork 9:20
part 8:24
particular 18:11
20:8 21:15 22:6
25:3
parties 5:21
Pauline 25:10
payments 24:2,19
24:23 25:9
payroll 8:22
pending 5:9
people's 8:18
pertaining 9:2,16
10:7 27:25 28:5
physical 6:13
pick 6:1,6
place 4:6
plaintiffs 1:7 2:2,11
4:11,12
please 6:4
Pocatello 2:4,15
point 21:24 22:3
portion 23:7
possession 9:2 26:7
practice 8:16
preliminary 5:6
preparation 19:2
prepare 10:11 11:2
15:15 20:25 26:24
prepared 9:23 10:1
10:14 11:8 12:16
12:18 14:19,24
15:2,3 17:20 19:4
25:24 28:14 29:11
preparing 15:11
present 2:22 4:10

4:14 5:25 8:11
prior 14:13 21:22
26:10,18
private 8:15
probably 12:19
proceeding 5:22
produce 16:5,5
produced 10:12
26:15
professional 7:13
23:25 24:7
profit 23:12
program 15:1
promissory 29:8
property 5:12
13:25 16:24 17:2
17:10 20:4
provide 5:17 10:18
15:10 22:3
provided 5:20 10:5
15:14 16:8 19:8
20:24 26:23
provides 19:23
Public 1:21 2:6
pull 18:24
pulled 19:18
pulling 13:19
purchased 18:18
21:15
purpose 5:6 7:2
14:6
purposes 15:10
pursuant 4:7
put 14:2 15:1 18:19
puts 15:2
p.m 2:5 30:19
P.O 2:14,20

Q
question 6:5 21:21
22:6
questions 5:14 7:3
25:19 30:14
Quick 15:7 16:7,8
19:8,10,11 22:18
23:7,8,11,19
24:10

R
Racine 2:3,12
ranch 5:12 27:17
28:5 30:9
RANDALL 2:13
Randy 4:11
readily 26:8
really 30:15
reason 18:22 21:20
recall 20:5,11
receipts 11:24 19:6
received 13:6 29:13
receives 28:22
Recess 25:16
recognize 14:18
recollection 21:4
record 4:5,19 6:25
25:14 30:3,5,6,11
records 9:1,16
11:11 12:5 20:1
27:3
referring 22:15
refinanced 29:4
reflect 4:5 10:6
16:12 24:18 25:7
reflected 10:5 13:21
17:11 20:13 21:12
24:2,13 25:4
reflecting 21:7 24:9
reflects 14:11 25:25
relating 4:2 20:2
relative 5:9 29:21
relied 10:12
rely 19:22
remember 29:16,17
rent 28:9
report 15:7,17 16:8
reported 1:19 25:1
28:15,18 29:22
reporter 2:6 5:15
6:1,6
reports 23:11,19
represent 23:24
representing 4:11
requested 9:16
30:21
resale 23:14
respect 26:22 27:12

27:16,21 28:12
response 5:15
restroom 6:24
retained 3:10 30:20
return 11:2,20
 14:15,16,23 15:5
 15:5,6,11,15 16:1
 16:13 17:13,19
 20:16 21:1,12
 22:17,22 23:3,10
 23:18 24:14 25:7
 28:19 29:11,19
returned 26:24
returns 3:8 9:2,5,23
 9:25 10:6,11,14
 11:4,13 12:17,18
 12:21,23 13:8,9
 14:19 17:18 19:2
 20:2 21:17,18
 22:2,9,10 25:23
 26:10,18,23,24
 28:14
review 23:3
reviewing 19:25
right 6:16 7:14,15
road 5:22
Rodney 1:20 2:5

S

sale 27:17,18 30:9
sales 16:4,10 22:24
 23:13
Salt 7:14,18 8:19,19
says 14:23 17:15
 23:13 24:17
schedule 13:23
 15:20,21 16:2,15
 16:24 17:1,12,20
 17:23 20:7 23:13
 23:17 24:6
schedules 3:9
school 7:5,7 8:9,12
Security 8:2,3
see 14:18 16:2,17
 18:5 19:4 21:7,18
 22:10,23,23 23:6
 23:17 24:2 25:15
seeing 29:16

self 14:24
semesters 7:8
send 5:20 10:19,22
sent 8:24 10:21
separate 23:21
September 20:19
 20:19
service 7:7
seven 13:24
sheep 21:23 22:4
sheet 11:18,21,22
 13:15,20,22 14:4
 25:25
sheets 12:2 14:6
 16:7 19:8
Shorthand 2:6
showed 22:6
showing 13:15
shown 17:21 30:1
shows 13:23 15:22
 16:10,16
side 8:16
sign 5:19 11:3
Signature 30:21
signed 10:15
simply 22:1 25:6
sir 12:3,6 14:21
 16:3,18,22 24:6
six 8:4
SIXTH 1:1
slips 19:19
Smith 2:18 4:13
 30:14
Soda 4:20,21 7:24
 8:9
sold 21:4,20,22,25
 22:4,12,13 23:5
source 12:1 16:19
 28:21
Souza 1:9 24:3,11
 27:9
spread 11:17,21,22
 12:2
Springs 4:21 7:25
 8:9
SRT-99 1:20
started 8:9,18
 12:19 19:10

starting 7:5
state 1:2 2:7 4:18
 8:2,3 10:23 11:4
 15:6
statement 29:12
statements 9:6 19:5
STEPHEN 2:18
Steve 4:13
Steven 8:17
Steven's 7:9,11,21
Stoddard 25:10
Street 2:19
Strike 22:22
subpoena 4:8 8:25
Suite 2:4,19
sum 10:25
summarized 11:23
summary 7:4,16
supplied 10:2
supported 19:8
suppose 27:15
sure 6:4 12:10,15
 18:14
sworn 4:2

T

take 6:14,23 14:13
 14:14 18:16,22
 22:8 23:1 25:6
taken 2:1 4:25 12:4
 13:3 29:21
talk 6:6
tax 3:8 9:2,5,23
 10:23 11:20 14:15
 14:16 17:13 20:2
 26:22 27:13,17,25
 28:14
taxes 8:18,20,21
 18:8,13
tecum 4:9 8:25
tell 4:2 16:23 17:1
 19:25 20:8 23:8
 26:13
testified 4:3
testimony 3:3 5:23
they'd 21:20
thing 15:16,19 18:2
 21:15

think 6:7 7:14
 20:15 26:11 30:12
three 16:2
time 4:6 6:11 18:11
 18:12 20:8 21:2
 21:25 22:4
Title 29:13,17,23
today 5:24 6:10,13
top 6:6
total 14:2 16:6 18:3
 25:6 26:5
Transport 8:7
TROXELL 2:17
trust 1:10 5:11,12
 9:5,11 27:9 28:1,4
trustee 1:9 27:9
truth 4:2
try 6:3 26:21
turn 23:19,22
two 7:8 14:23 15:21
type 5:15 15:9
 23:15
typically 11:23

U

Uh-huh 6:8 8:4
 22:25
uncertainty 21:21
underlying 11:12
 19:7
understand 12:4,16
 13:8 24:22
University 7:8
use 6:23
Utah 7:9

V

various 14:12 24:13
vs 1:8

W

Walker 7:18
want 6:21 26:13
wanted 18:14 22:1
water 6:23
way 12:24 17:7
 22:5
week 6:11
went 7:7,8,24

we'll 6:24 26:4
we're 5:16 22:21
 23:18
we've 12:24 14:12
 19:3 25:22,23
Witness 23:2 30:17
work 7:17,24 8:12
 8:16 9:9,11 12:13
 27:13,20,25
worked 7:18,22 8:1
 8:5,7
working 8:9
works 5:13
wouldn't 17:24
 24:25 27:2

X

X 3:1

Y

Yeah 6:8 7:15
 14:18 18:11
year 8:6 12:20,24
 13:24,25 14:1,1
 15:18,24,25,25
 17:23 24:5,19
yearlings 15:23
 21:8,16,19,24
years 8:1,4,20,23
 12:17,25 13:17,20
 14:7,20 19:13,15
 20:11 26:1,10,19
 29:4

\$

\$1,250 24:11
\$12,000 23:14,15
\$17,000 22:14
\$17,338.65 22:20
\$406 24:12
\$44 24:12
\$73 18:4

0

07 23:5

1

1/16/04 22:13
1:30 2:5

1000 2:19	23:3,9,10,12,18
1040 14:15	24:2,10 29:8,11
1098 29:3	29:14,19
1098s 29:1	2008 9:21 20:16,25
1099s 28:22,23 29:1	2009 1:17 2:5
12 7:25	201 2:3
1391 12:14	21 14:15,22 21:5
141 4:20	22 14:16 17:19
15th 20:20,21,23	2286 24:7,8
21:1	23 29:24
15,000 20:7	25 3:8
16 16:16 17:20	26,428 16:17
1617 2:20	<hr/>
169,760 16:6	3
1963 7:7	<hr/>
1969 7:19	3 7:24
1970 8:19	31 3:8 25:17,23
1974 7:10,19,20	26:4,16
8:19	33 15:22 21:7,15
1980 12:19	35 8:23
1986 9:5	35,539 30:2
1990 8:7	<hr/>
1993 21:16	4
1995 8:8	<hr/>
1996 9:17 12:17	4 3:4
13:9,11	4562 15:22,24
<hr/>	16:21 21:6
2	<hr/>
<hr/>	6
2A 2:4	<hr/>
2:30 30:19	6/29/1945 4:23
2000 9:18	<hr/>
2001 9:19	7
2002 9:19	<hr/>
2003 9:19	7 1:17 2:5
2004 9:20 13:14,20	74 15:23 21:7,15
14:3,7,15,17,23	<hr/>
15:4 16:1 21:12	8
21:13 22:9,17,21	<hr/>
26:1	83204-1391 2:15
2005 9:20 13:14,21	83701-1617 2:21
14:3 26:1	877 2:19
2006 9:20 13:14,21	<hr/>
14:3,7 18:1,19,20	9
26:2	<hr/>
2007 9:17,21 12:17	93 8:8
13:10,12 14:16,17	96 25:24
17:18,19 18:18,21	97 13:11 25:24
18:23 20:11 22:10	98 13:11 25:25
	99 13:11 25:25



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BANNOCK

DALLAS BEUS, individually)
DOUG BEUS, individually,)
Plaintiffs,)

COPY

vs.) Case No. CV-09-1822-OC

JOHN C. SOUZA, Trusee of)
the Lynn G. Beus Trust;)
JERRY BEUS, individually,)
Defendants.)

DEPOSITION OF TOM MCBRIDE

JULY 7, 2009

REPORTED BY:

RODNEY FELSHAW, C.S.R. No. SRT-99

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BANNOCK

DALLAS BEUS, individually)
DOUG BEUS, individually,)
Plaintiffs,)
vs.) Case No. CV-09-1822-OC
JOHN C. SOUZA, Trustee of)
the Lynn G. Beus Trust;)
JERRY BEUS, individually,)
Defendants.)

DEPOSITION OF TOM MCBRIDE
JULY 7, 2009

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INDEX

1		
2		
3	TESTIMONY OF TOM MCBRIDE	PA
4	Examination by Mr. Budge	4
5	Examination by Mr. Smith	43
6	Further Examination by Mr. Budge	48
7	Further Examination by Mr. Smith	50
8		
9	EXHIBITS	
10	No. 27 Title policy and title commitment.	37
11	No. 28 2002 tax returns.	37
12	No. 29 Quitclaim deed.	50
13	No. 30 Documents from Mr. McBride's file.	50
14	(Exhibits retained by Mr. McBride.)	
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 THE DEPOSITION OF TOM MCBRIDE was taken
2 on behalf of the Plaintiffs at the offices of
3 Racine, Olson, Nye, Budge & Bailey, 201 East
4 Center, Suite 2A, Pocatello, Idaho, commencing at
5 10:55 a.m. on July 7, 2009, before Rodney Felshaw,
6 Certified Shorthand Reporter and Notary Public
7 within and for the State of Idaho, in the
8 above-entitled matter.

9

10 APPEARANCES:

11 For the Plaintiffs:

12 RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED
13 BY MR. RANDALL C. BUDGE
14 P.O. Box 1391
15 Pocatello, Idaho 83204-1391

16 For Defendant Jerry Beus:

17 HAWLEY, TROXELL, ENNIS & HAWLEY LLP
18 BY STEPHEN C. SMITH
19 877 Main Street, Suite 1000
20 P.O. Box 1617
21 Boise, Idaho 83701-1617

22 Also Present: Lamont Jones

23 Dallas Beus
24 Doug Beus
25 Jerry Beus

1 TOM MCBRIDE,
2 first duly sworn to tell the truth relating to
3 said cause, testified as follows:

4

5 MR. BUDGE: Let the record reflect that
6 this is the time and the place for the deposition
7 duces tecum of Tom McBride, an officer with
8 Ireland Bank. Mr. McBride is present with the
9 attorney for Ireland Bank, Lamont Jones. Also
10 present is myself, Randy Budge, representing the
11 plaintiffs, which is Dallas Beus and Doug Beus,
12 who are present. Also present is one of the
13 defendants, Jerry Beus, with his attorney of
14 record, Steve Smith.

15

16 EXAMINATION

17 BY MR. BUDGE:

18 Q. Would you state your full name and
19 address for the record.

20 A. Middle name also?

21 Q. Whatever you go by is fine.

22 A. I go by Tommy McBride.

23 Q. And what is your business address?

24 A. 98 West Second South, Soda Springs,
25 Idaho, 83276.

Q. And that business address is your

2 employer, Ireland Bank?

3 A. Correct.

4 Q. Have you had your deposition taken
5 before?

6 A. No, I have not.

7 Q. Let me give you a few preliminary
8 suggestions if I could. The purpose of the
9 deposition is basically to find out what facts you
10 may have that is relevant to some litigation
11 pending in Bannock County in case CV-09-1822-OC,
12 between the Beuses relative to the family ranch
13 known as the Beus Ranch east of Soda Springs.

14 During the course of the deposition
15 the reporter here will take down the questions
16 that I ask you and he'll also take down and record
17 your answers. Then at the completion of the
18 deposition he will write all of that down into a
19 book and provide it to you so you'll have an
20 opportunity to read it. And if you have some
21 corrections or changes you wish to make, something
22 comes to mind later that you didn't remember today
23 or that was incorrect, you can make those
24 corrections at that time. And then that
25 deposition will get -- copies will be provided to

1 counsel for both parties. And it could be
2 presented in court for purpose of some future
3 proceeding relating to this case.

4 As we go through this question and
5 answer process, the reporter can't record anything
6 that's not audible. So on yes or no questions
7 you'll have to audibly say yes or no rather than
8 nodding your head. And he'll also have issues
9 with you and me if we talk over each other. So
10 I'll try not to interrupt your questions, or your
11 answers, excuse me, and make sure you wait until I
12 finish the whole question before you give your
13 response.

14 There may be some questions that I
15 pose to you, Mr. McBride, that may be confusing or
16 that you don't fully understand. If that's the
17 case, don't hesitate to tell me to rephrase the
18 question and I'll be happy to do so. Some
19 questions may call for an estimate of time or
20 distance or place. I just ask that you answer
21 them to the best of your knowledge and
22 recollection, but not to speculate or guess. So
23 if you don't recall or you're not sure and prefer
24 to say you don't recall or remember, that's
25 certainly an acceptable answer as well.

1 If at any time during the deposition

2 you want to take a break for personal reasons or
3 to visit with your attorney, Mr. Jones, we'll take
4 a break.

5 A. Okay.

6 Q. Any questions that you have on this
7 process before we proceed?

8 A. Not at this time.

9 Q. Mr. McBride, are there any mental or
10 physical limitations that would impair your
11 ability to give the deposition today?

12 A. No.

13 Q. And you brought with you a file; is
14 that correct?

15 A. Yes.

16 Q. And just generally describe what it is
17 that you brought with you?

18 A. This file is on the term loan of Jerry
19 Beus.

20 Q. And that would be basically documents
21 that are compiled in the ordinary course of
22 business of Ireland Bank with respect to their
23 loan dealings with Mr. Beus?

24 A. Correct.

25 Q. Just as a matter of some preliminary

1 questions, could you just give me a capsule
2 summary of your educational background, starting
3 with where you went to high school and then bring
4 us up to date.

5 A. I went to high school at North Gem
6 High School in Bancroft, Idaho. I attended Idaho
7 State University voted in auto mechanics. I
8 completed that course and worked for a year or two
9 as a mechanic in that field. I returned back to
10 school at ISU and went through business finance
11 and graduated in '97, I believe, in business
12 finance. I obtained a job with Ireland Bank and
13 have been there since.

14 Q. So your work experience with Ireland
15 Bank would have started in about '97 after
16 graduating from ISU?

17 A. Correct.

18 Q. And you've been with them continuously
19 since then?

20 A. Yes.

21 Q. What is the current position that you
22 have, Mr. McBride?

23 A. Assistant vice president and senior
24 loan officer.

25 Q. And how long have you held that

1 position?

2 A. Since February.

3 Q. What position did you have prior to
4 that?

5 A. I was the branch manager of the Soda
6 Springs branch and a loan officer and assistant
7 vice president.

8 Q. Could you give me a general overview
9 of what your responsibilities presently include as
10 vice president and senior loan officer?

11 A. I take in applications, process them
12 for approval of loans or deny the credit from the
13 application. I help out on the teller line.
14 Other routine banking duties.

15 Q. You're appearing at this deposition in
16 response to a deposition notice and also a
17 subpoena duces tecum that we provided, correct?

18 A. Yes.

19 Q. And there was some documents that you
20 were asked to bring with you in the subpoena duces
21 tecum that were listed. Would those be items that
22 would be contained in the loan file you brought
23 with you?

24 A. Some of them.

25 Q. The loan file that you have brought,

Page 10

1 does that pertain to Jerry Beus's loan?

2 A. Yes.

3 Q. And is there a time period of that
4 particular loan file that is reflected by these
5 documents?

6 A. Can you clarify?

7 Q. I'll rephrase that. What time period
8 is covered by the loan documents that you brought
9 with you in this particular file?

10 A. Hmm, the main loan would be the loan
11 done -- completed June 7th, 2002. There are some
12 old loans that this loan paid off that's copies of
13 them, showing stamped paid by renewal of this
14 particular loan.

15 Q. So basically that loan file would
16 reflect the 2002 loans with Jerry Beus and then
17 some information pertaining to the loans that were
18 paid off by the 2002 loans?

19 A. Correct. Can I clarify?

20 Q. Sure.

21 A. Just the term loan, not the operating
22 loan.

23 Q. Did you bring any information
24 pertaining to the operating loan?

25 A. No.

1 Q. Were you the loan officer that took in
2 the initial loan application from Jerry Beus
3 reflected in this file?

4 A. Yes.

5 Q. And were you primarily responsible for
6 that particular loan?

7 A. Yes.

8 Q. And did you handle the processing of
9 the loan applications and the approval of the loan
10 itself?

11 A. In my duties as a loan officer, if
12 it's above my lending limit I had to get committee
13 approval, which had to be obtained for this.

14 MR. BUDGE: Let's go off the record for a
15 moment.

16 (Discussion off the record.)

17 Q. (BY MR. BUDGE) Let's go back on the
18 record. Mr. McBride, while we were off the record
19 we generally discussed the loan file that you
20 compiled with Jerry Beus. It's my understanding
21 that the file you brought with you would be a
22 complete record of the documents maintained by the
23 bank with respect to the term loan or the
24 operating loan?

25 A. The term loan.

Page 12

1 Q. And would there be a different file
2 pertaining to the operating loan?

3 A. Yes.

4 Q. And you handled both loans for Mr.
5 Beus in behalf of the bank?

6 A. Yes.

7 Q. When did you first become acquainted
8 with Jerry Beus and what were those circumstances?

9 A. I would say somewhere in the vicinity
10 of the year 1999, 2000, as an employee the bank, a
11 loan officer at the time.

12 Q. You didn't know him personally prior
13 to the business relationship with Ireland Bank?

14 A. No.

15 Q. And did you work with him as a
16 customer of the bank?

17 A. Yes.

18 Q. And after that began in '99 or 2000,
19 whenever it was, was that an ongoing relationship
20 for a period of time?

21 A. Yes. It would have gone through the
22 time that he no longer was a customer of the bank.
23 Well, paid off the loans.

24 Q. And when would that have been that the
25 relationship ended? Would that be on or about the

date the notes were paid off?

2 A. Correct. 5/4 of 2007.

3 Q. To your knowledge did Mr. Beus have
4 other business dealings with the bank besides the
5 loans pertaining to the farm operation?

6 A. I believe he has a checking account at
7 the bank.

8 Q. Okay. Do you know whether that
9 account is still maintained?

10 A. No, I don't.

11 Q. When Jerry Beus came to you initially
12 it would have been in '99 or 2000. Did he make a
13 request to you for an agricultural type loan?

14 A. Yes.

15 Q. And did he provide information to you
16 in support of a loan application at that time?

17 A. Yes.

18 Q. And would that be contained in this
19 file?

20 A. No.

21 Q. That would be in other bank records?

22 A. (Witness nodded his head.)

23 MR. SMITH: I didn't hear an answer.

24 THE WITNESS: Sorry. Yes.

25 Q. (BY MR. BUDGE) So when was the first

1 loan that you can recall that was made to Jerry
2 Beus as a part of his agricultural operation?

3 A. I have a record here back to a note
4 back to 1999, but I'm sure I had done work with
5 him prior to that.

6 Q. Okay. The files that you have with
7 you to refresh your memory reflect a first loan in
8 '99. Can you tell us what the loan was for, if
9 you know? Was it an operating loan or a term
10 loan; and what was the approximate amount, if your
11 records reflect that?

12 A. This particular note was for \$16,106.
13 The purpose was for a 1990 -- 1984, excuse me,
14 semi-tractor and hay grinder.

15 Q. Okay. And I just want to have you
16 give me a little bit of a loan history that you
17 can tell me, bringing us forward to the key loans
18 in this case, which were the ones in 2002. So
19 there was a loan in 1999 for a tractor. Do you
20 see some others in there that preceded the loans
21 in 2002?

22 A. There's a promissory note of December
23 5th, 2000.

24 Q. Do you see an amount on that one?

25 A. \$141,783.

1 Q. Are you able to tell what the purpose
2 of that loan was for?

3 A. Hmm, it was to term out a 2000 carry
4 over. So it was --

5 Q. Is that referring to an operating loan
6 carry over?

7 A. Yes.

8 Q. So the operating loan from the
9 previous year would have been simply a one year
10 loan?

11 A. Correct.

12 Q. So at the end of the period, if there
13 were a balance, this loan would have termed it
14 out?

15 A. Correct.

16 Q. Were you providing operating loans on
17 a year to year basis to Mr. Beus from 1999
18 forward?

19 A. Yes.

20 Q. And those wouldn't be reflected in
21 this file, the operating loans?

22 A. Not all of them. I mean, do you
23 want --

24 Q. Let's continue forward after the
25 December 5th, 2000 loan.

1 A. Here is December 1st, 1999. The note
2 amount was 30,250. The purpose was to renew a
3 note and additional money. It doesn't reflect how
4 much new money.

5 Q. Okay.

6 A. A note done December 5th, 2000. The
7 amount was 167,800.

8 Q. Let me stop you on that one for a
9 second. So there were two different notes both on
10 December 5th, 2000? I think you told me there was
11 one for 141,783. Is this a second one?

12 A. Correct.

13 Q. So on December 5th, 2000, the \$141,783
14 note you indicated was to term out his operating
15 loan carry over balance for 2000. The second note
16 for 167,800, are you able to determine what that
17 loan was for?

18 A. 2001 operating line of credit.

19 Q. Let's continue forward from there.

20 A. That's all I have.

21 Q. So those December 5th, 2000 promissory
22 notes that we've discussed, were those
23 subsequently paid off by the loans in 2002?

24 A. Yes.

25 Q. Before we move to those, can you tell

1 from your file, Mr. McBride, what security the
2 bank had for repayment of those two December 5th,
3 2000 promissory notes?

4 A. The note of December 31st, 1999, the
5 security was a security agreement dated 12/1/99
6 covering livestock, feed, crops and equipment.
7 And a security agreement dated 12/31/1999 covering
8 a 1984 Kenworth semi-tractor and a Roto-Grind hay
9 grinder.

10 Q. Okay. And what was the security taken
11 for the December 5th, 2000 promissory notes?

12 A. Security agreement dated 12/1/1999
13 covering livestock, feed, crops, equipment and
14 government payments. A security agreement dated
15 12/31/1999 covering livestock, feed, crops,
16 equipment, and a 1994 Kenworth and a Roto-Grind
17 hay grinder.

18 Q. So up to this point in time, through
19 these loans we've been discussing in '99 and 2000,
20 is it accurate to say that there was not any real
21 property that was pledged as security for
22 repayment?

23 A. Correct.

24 Q. Were you familiar with the fact that
25 the farm operation that Jerry Beus had at this

Page 18

1 point in time was on land which he leased?

2 A. Yes.

3 Q. And was a copy of that lease agreement
4 something that was provided to you by Mr. Beus as
5 a part of the loan application?

6 A. Yes.

7 Q. Looking at what we've previously
8 marked as deposition exhibit 3, which appears to
9 be a farm lease between -- I can't read it upside
10 down. Okay. R.M. Whittier as personal
11 representative and as trustee of the estate of
12 Lynn Beus as the lessor and Jerry Beus, does that
13 appear to be a copy of the same lease agreement
14 that was provided to you by Mr. Jerry Beus and is
15 part of your loan file?

16 A. Yes.

17 Q. So when you were making operating
18 loans was it your general understanding that it
19 was for the purpose of providing Jerry Beus with
20 operating funds pertaining to this particular
21 property that he was leasing from his father's
22 estate and trust?

23 A. Yes.

24 Q. Turning to exhibit 4, it is an
25 addendum to that lease we just reviewed, to extend

1 it for a further period of time. Is that a
2 document that you're familiar with or have seen
3 before?

4 A. No.

5 Q. Are you acquainted or do you have any
6 recollection whether any of the operating loans
7 that we've been discussing to Mr. Beus included
8 monies to enable him to make mortgage payments to
9 the Federal Land Bank, anything that you have
10 knowledge of or recall?

11 A. No.

12 Q. As a part of Mr. Beus's loan
13 application, what types of information did he
14 provide you?

15 A. He would provide a financial
16 statement, a budget for the upcoming year, and his
17 most recent tax returns.

18 Q. And when the loans were made in 2002
19 that we're about to approach, did he provide you
20 with that same information? Is that a common
21 requirement for each loan, that he would have to
22 provide a financial statement and a budget and tax
23 returns?

24 A. Yes.

25 Q. Can you just put for the time being,

Page 19

1 so we can look at it later, put a sticker on the
2 financial statement and budget and tax returns
3 that Mr. Beus would have provided you in support
4 of the 2002 loan.

5 A. Okay.

6 Q. Mr. McBride, please turn to exhibit 6.
7 Strike that. Before we get there, looking at
8 exhibit 5 as a more recent farm lease dated
9 January 1st, 2007. I take it you would not have
10 seen that before because that was after your
11 business relationship had ended as far as
12 providing loans to Mr. Beus?

13 A. Correct.

14 Q. So you haven't seen that lease before?

15 A. Correct.

16 Q. Looking at exhibit 6 now, do you
17 recognize exhibit 6 as a loan that was made by
18 Ireland Bank for agricultural purposes to Jerry
19 Beus under date of June 7th, 2002?

20 A. Correct.

21 Q. I believe you testified before that
22 you were the loan officer that would have handled
23 this loan as well?

24 A. Yes.

25 Q. And what is the amount of that

particular loan, can you tell?

2 A. \$372,740.

3 Q. And what was the interest rate?

4 A. 7.75 percent.

5 Q. And was that particular loan to be
6 paid off over a term of time?

7 A. Yes.

8 Q. Can you determine what the annual
9 payments were and the payment period and when the
10 final due date was?

11 A. He agreed to pay seven payments. The
12 payment amount was \$42,919.09, beginning December
13 1st, 2002, and would mature December 1st, 2008.

14 Q. And the purpose of that loan was for
15 agricultural purposes, as stated on the face of
16 the loan?

17 A. Yes.

18 Q. And is it your initials that appear on
19 that promissory note?

20 A. My signature is on the final page.

21 Q. And is that also the signature of
22 Jerry Beus?

23 A. Yes.

24 Q. And he would have signed that in your
25 presence, I assume?

1 A. Yes.

2 Q. Are you able to tell from your files
3 what the purpose of that particular loan was?

4 A. To restructure note 6020002480, note
5 6020002482, note 6020002315, and note 602002303.
6 And add additional money for debt consolidation.

7 Q. Those prior note numbers that you're
8 identifying, are they reflected on exhibit 6 that
9 you're looking at?

10 A. Yes.

11 Q. And so those four, if I counted right,
12 those four prior notes were being refinanced by
13 this particular note?

14 A. Yes.

15 Q. And then there was some additional
16 funds that were provided besides?

17 A. Yes.

18 Q. Are you able to determine from your
19 file what the additional funds were for? Is that
20 a new operating line or for something else?

21 A. Something else. It would have been to
22 pay off a gas bill and some other debts that he
23 had on a financial statement that needed to be
24 addressed.

25 Q. That exhibit 6 we're looking at has a

1 stamp on it marked paid with a date of May 4th,
2 2007?

3 A. Yes.

4 Q. Would that have been the date that the
5 bank received the funds and paid that note off?

6 A. Yes.

7 Q. And would you know the source of the
8 funds for that payoff, where the money came from?

9 A. Yes.

10 Q. Could you explain that?

11 A. It was a check from Caribou Land
12 Title, Incorporated.

13 Q. So was it your understanding that
14 there was some refinancing that was being closed
15 by Caribou Land Title and they disbursed the funds
16 to you?

17 A. Correct.

18 Q. Before we look at the security for
19 that particular loan, let's jump over to exhibit

20 9. Do you recognize that as a second loan that

21 Ireland Bank made to Jerry Beus on the exact same
22 date as the one we've been discussing, exhibit 6,
23 being June 7th, 2002?

24 A. Yes.

25 Q. And is that note one for \$235,000 with

1 the same 7.75 percent interest rate?

2 A. Yes.

3 Q. Was that also an agricultural loan
4 that was signed by you as well as Jerry Beus?

5 A. Yes.

6 Q. And do you know the purpose of that
7 loan?

8 A. It was his 2002 operating line of
9 credit.

10 Q. Would that have been a new operating
11 line at that point?

12 A. Yes.

13 Q. So between those two promissory notes,
14 Ireland Bank was restructuring prior debts of Mr.
15 Beus and then making a new operating loan to move
16 forward?

17 A. Yes.

18 Q. And would those two promissory notes
19 consist of all of the loans that were outstanding
20 to Mr. Beus at that point in time, as far as you
21 know at least with Ireland Bank?

22 A. With Ireland Bank, yes.

23 Q. Do you have records that would
24 reflect -- strike that. When I look at exhibit 9,
25 the note we've been discussing, the copy reflects

1 a payoff date on that which appears to be November
2 29th, 2002?

3 A. Yes.

4 Q. Do you know the source of the funds to
5 pay off that loan?

6 A. No.

7 Q. Are you able to determine whether the
8 payment came from Mr. Beus or from some other
9 source?

10 A. It came from Mr. Beus.

11 Q. Let's jump back. I need to ask you
12 some questions about the security for those
13 particular loans. Before doing so, if you would
14 look at exhibit 7, do you recognize these as two
15 letters that you provided to our office to explain
16 the purposes of those notes and mortgages in 2002?

17 A. Yes.

18 Q. If you will take a moment, Mr.
19 McBride, and review those two letters. They
20 appear to me to be consistent with the description
21 you gave to us here of the loans and what they
22 were for. Look at those and if there's anything
23 that you see not accurate or needs clarification,
24 you can provide it.

25 A. I don't see anything.

1 Q. If you will look at exhibit 8, it
2 appears to be a mortgage that Mr. Beus -- excuse
3 me, a mortgage in favor of Ireland Bank dated June
4 7th, 2002. That appears to be the mortgage that
5 secured the first note we talked about, exhibit 6?

6 A. Yes.

7 Q. And then if you'll look at exhibit 10
8 there is a second mortgage against the identical
9 property, which appears to be security for the
10 second note we were discussing, exhibit 9?

11 A. Yes.

12 Q. Was there other security pledged to
13 the bank for repayment of these two notes in
14 addition to those mortgages?

15 A. Yes.

16 Q. Can you describe what that was?

17 A. A security agreement dated June 7th,
18 2002, covering livestock, equipment, crops and
19 feed.

20 Q. And you had a security agreement,
21 then, that pledged the assets you described to
22 secure both notes in addition to the mortgages?

23 A. Yes.

24 Q. And would this have been the first
25 time that the bank obtained real property as

1 security for repayments of the notes to Jerry
2 Beus?

3 A. Yes.

4 Q. Let's look first, if we could, at the
5 first mortgage, exhibit 8. I believe that
6 mortgage secured the \$235,000 note, correct?

7 A. No. It was the 372,740 note.

8 Q. Take a look at exhibit 10. Which note
9 is secured by the real estate mortgage, exhibit
10 10? Is that the \$235,000 one?

11 A. Correct.

12 Q. Looking first at exhibit 8, I believe
13 both of these mortgages are identical other than
14 they secure different notes?

15 A. Yes.

16 Q. Identical as to the property pledged
17 and they both were given by the Lynn G. Beus Trust
18 and both were executed by John C. Souza as
19 trustee; is that correct?

20 A. Yes.

21 Q. Can you explain the circumstances
22 under which the bank secured these two mortgages
23 as security for the notes that came from the Lynn
24 G. Beus Trust?

25 A. Jerry, as many farmers in the area

1 were facing -- coming up against some hard times
2 and was carrying over some debt, the first -- the
3 term loan, exhibit 6, that note was to term out
4 those loans and pay some other bills that Jerry
5 had at the time. And the other one was, as you
6 said, another operating line so he could operate
7 from that point on.

8 Q. So when these two loans were made in
9 2002, was it the position of Ireland Bank that it
10 could not make the loans requested by Jerry unless
11 he provided some additional security?

12 A. We were needing additional security on
13 those due to the fact that the equipment and
14 livestock and crops was not sufficient to what the
15 bank was requiring.

16 Q. And I assume that you advised Jerry
17 Beus of that when he made that loan application
18 that preceded these 2002 notes?

19 A. Yes.

20 Q. And do you recall what Jerry Beus
21 indicated he would do to provide additional
22 security?

23 A. Hmm, I don't really know exactly how
24 it transpired that we obtained security in real
25 estate.

Q. So did Jerry indicate that he'd be able to put the farm land up as security that was held in trust?

A. I think Jerry said he would talk to his mother about that.

Q. And his mother would have been Beth Beus?

A. Correct.

Q. Did you have any meetings with Jerry where Beth Beus was present or where John Souza, the trustee of the trust, was present?

A. Yes.

Q. And would that have been just prior to or at the signing of these notes on June 7th, 2002?

A. Just prior to signing, yes.

Q. And would that meeting have occurred in the Ireland Bank in Soda Springs?

A. Yes.

Q. Do you recall the conversations that happened during that meeting?

A. Beth and I and John discussed Jerry's operation. Beth was inquisitive of why the property needed to be used. I indicated to her that it was just additional collateral to allow

Q. And you explained to them that for the bank to be able to continue to finance Jerry, additional security would be needed?

A. Yes.

Q. And then did they propose to put up the property owned by the trust as security or did you ask for that or what happened from there that gave rise to the real estate mortgage being signed by the trust?

A. I believe I had conversation with John prior to that, John Souza. He thought that Beth would be okay with that so Jerry could continue his operation. He arranged the meeting prior, I believe, to signing of the documents so that me and Beth and he could clarify why the things that had led up to that.

Q. Was it your understanding that Jerry Beus had come to John Souza and said we need to put up the trust property as security in order to be able to continue to finance with Ireland Bank?

A. Yes.

Q. So then Jerry got ahold of you by phone and arranged the meeting with he and you and Beth where the mortgage was discussed, or the need for the mortgage was discussed?

Jerry to continue his operation. She seemed okay with that.

Q. And what about Mr. Souza's role as trustee of the trust, do you recall what his participation was in the meeting, what he may have said to you, his involvement in the discussion?

A. He didn't -- I don't recall his involvement.

Q. He was present, though?

A. He was present, yes.

Q. So he was just listening to the conversation between you and Jerry and Beth?

A. I don't think Jerry was present at the time.

Q. So just John Souza and Beth?

A. Uh-huh.

Q. So how did it come about, then, following that conversation that John Souza signed the two real estate mortgages on behalf of the Lynn G. Beus Trust?

A. Clarify that for me.

Q. Following the conversation you had -- Jerry wasn't present, but Beth was and John Souza was there as well?

A. Yes.

MR. SMITH: Object to the form. You said Jerry arranged for the meeting. Don't you mean John?

MR. BUDGE: I do mean John. Excuse me.

THE WITNESS: Correct, John had arranged for that.

Q. (BY MR. BUDGE) Okay. So, Mr. McBride, did you have any title work done to confirm that the trust in fact owned this land that was being put up as security?

A. Yes.

Q. And you're looking at a title report that I believe was obtained?

A. Actually I'm looking at the preliminary title report.

Q. And what was the date on that, if you can tell me?

A. 5/21 of 2002.

Q. And from what title company?

A. Caribou Land and Title.

Q. Was that preliminary report relied upon to confirm that the trust in fact owned the property and could provide the bank with a lien condition?

A. Yes.

1 Q. And does that title report reflect any
2 existing encumbrances against the property as of
3 May 21st, 2002?

4 A. Yes.

5 Q. And what does it reflect?

6 A. A mortgage executed by Lynn G. Beus
7 and Beth G. Beus, husband and wife, to Federal
8 Land Bank of Spokane, a corporation, to secure
9 payment of \$111,200.

10 Q. Were you able to determine from your
11 file what the balance was on that mortgage at the
12 time you were considering the 2002 loan to Jerry?

13 A. No.

14 Q. Do you know whether or not part of the
15 funds that were loaned to Jerry Beus in 2002 went
16 to pay off the balance on that Federal Land Bank
17 loan?

18 A. No. My records indicate that
19 that's -- that that was still in effect after our
20 loan was completed. Wait a second. Just a
21 second.

22 Q. Go ahead.

23 A. My final title policy indicates that
24 that loan was not in force at the time.

25 Q. Okay. So that would indicate that

Page 34

1 sometime between the commitment on May 21st of
2 2002, and what was the date of the final policy?

3 A. 6/13/2002.

4 Q. So by 6/13/2002 the title report from
5 Caribou Title reflected that the Federal Land Bank
6 loan had been paid off?

7 A. Correct.

8 Q. Let me have you turn to exhibit 26
9 here. If you'll look at exhibit 26, the first
10 page I think you'll recognize is a letter from
11 Caribou Title?

12 A. Yes.

13 Q. And if you'll look at the second page,
14 it is a release that was recorded by Caribou Title
15 under date of June 10th, 2002. Do you see that as
16 reflecting a release of the Federal Land Bank
17 mortgage?

18 A. I see it.

19 Q. And if you'll turn to the next page
20 back, you'll see a copy of the mortgage that was
21 being released?

22 A. Okay.

23 Q. And you'll note on the last page of
24 that it shows instrument number 60294. I'd like
25 you to look back at your final title policy --

1 excuse me. Look at the commitment that you
2 mentioned you had in your file dated May 21st,
3 2002, and see if the Federal Land Bank mortgage
4 instrument number there is the same as this one
5 that's being paid off as reflected by the
6 documents that are exhibit 26?

7 A. Yes, they are the same number.

8 Q. Okay. So are you able to tell, as a
9 part of the disbursement of the 2002 loans,
10 whether or not a portion of those funds in fact
11 paid off this Federal Land Bank mortgage that was
12 shown on the May 21st, 2002 commitment, but then
13 was removed by the time you got your final report,
14 June 13th, 2002?

15 A. (No answer.)

16 MR. BUDGE: Off the record.

17 (Discussion off the record.)

18 Q. (BY MR. BUDGE) Back on the record. Mr.
19 McBride, you're unable to determine, based on the
20 term loan file that you have there, whether the
21 payment went directly from the bank to pay off
22 that Federal Land Bank loan, correct?

23 A. Correct.

24 Q. Is it possible that the records of the
25 operating loan file might reflect such a payoff?

Page 35

1 A. It could.

2 Q. Is that something you could check when
3 you go back to your office?

4 A. No.

5 Q. You don't have that file available?

6 A. No.

7 Q. Is that file in existence any longer?

8 A. No.

9 Q. Just a couple of other questions, if I
10 might. The tax returns that Jerry provided you in
11 support of the 2002 loan application, can you look
12 at your copy and tell me what year those are?

13 A. 2002.

14 Q. Well, the 2002 loan, but what year are
15 the taxes?

16 A. 2002 taxes.

17 Q. If you would put a sticker on that as
18 well, please.

19 Mr. McBride, do you have any loans
20 that you made to Beth Beus?

21 A. No.

22 Q. Any loans to the Lynn G. Beus Trust?

23 A. No.

24 Q. And any to John Souza as trustee?

25 A. No.

Q. Have you had any dealings with Mr. Beus's attorneys relative to any of these loans, other than Mr. Souza was there as trustee? Have you had any dealings with any other attorneys that were representing Jerry Beus?

A. No.

Q. No communications with Clyde Nelson?

A. No, not in regards to this.

MR. BUDGE: Okay. Let's take a short break. I think I'm about done.

(Recess.)

(Exhibits 27 and 28 marked.)

Q. (BY MR. BUDGE) Let's go back on the record. Mr. McBride, during the break we made copies of the title insurance commitment and also the title policy obtained in conjunction with the 2002 loan to Jerry Beus which we discussed earlier.

If you'll look at exhibit 27, do you recognize that as copies of those -- the title policy and the title commitment taken from your file copy that we discussed earlier?

A. Yes.

Q. And if you'll look at exhibit 28, we also produced a copy of Jerry Beus's 2002 return,

Page 38

which is taken from the copy in your file. Do you recognize that?

A. Yes.

Q. Just a couple of follow-up questions. The title reports indicate that when you were going to take a mortgage from the trust to get security in real property known as the Beus Ranch, the commitment reflected a Federal Land Bank mortgage of record, correct?

A. Yes.

Q. And then that got paid off and is no longer shown as an encumbrance on your title policy, which is part of exhibit 27, correct?

A. Correct.

Q. And the title policy then reflects that Ireland Bank, by reason of its recorded mortgages from the Lynn G. Beus Trust, has a first and second lien position on the real property, would that be correct?

A. Yes.

Q. Do you recall whether Ireland Bank required that it have a first lien position against the real property in order to make these 2002 loans to Jerry Beus?

A. No. I don't recall.

Q. When I looked at those notes we were discussing earlier, the operating note which was exhibit 9, if you want to look at that again, reflected the payoff of November 29th, 2002. Do you know whether Jerry Beus was liquidating livestock in order to pay off that operating loan?

A. I would assume that he did. I don't know if he did.

Q. You can't tell for sure from the file?

A. I don't have that file.

Q. Do you have any recollection of a conversation at some point after the 2002 loans and before Ireland Bank was out of the picture with Jerry Beus about his loans being in default and that he would be required to sell his livestock and apply the proceeds to your loan?

A. Repeat that.

Q. Do you have any recollection of having a conversation with Jerry, or conversations, on these 2002 loans at a later date?

A. No.

Q. No subsequent conversations with him after 2002 before they were paid off?

A. I don't recall any.

Q. Okay. Are you able to determine from

Page 40

your records what the payment history would have been on the 2002 note, exhibit 6, that didn't get paid off until May 4th, 2007?

A. I don't have record in the file.

Q. That would be a different record that would reflect the payment history?

A. Yes.

Q. Would that be a ledger sheet of some sort that would reflect year to year the loan balances of Mr. Beus?

A. Yes.

Q. Could that be produced and provided separately?

A. Possibly.

Q. Would you check and see what you can find on that?

A. Yes.

Q. And if you're able to locate something, would you provide a copy of that ledger sheet that would reflect the loan payment history on these two 2002 loans?

A. You say both loans?

Q. Yes. With respect to the \$372,700 loan in 2002, exhibit 6, the one that wasn't paid off until May 4th, 2007, do you know whether the

1 annual payments were current or in default at the
2 time that loan was paid off?

3 A. I don't have any recollection to it.

4 Q. You would have to look at the payment
5 records to determine that?

6 A. Uh-huh. Yeah.

7 Q. Would my understanding be correct that
8 there were no other loans after these on June 7th
9 of 2002 to Jerry Beus that were made?

10 A. Correct.

11 Q. Is there a reason why the bank did not
12 continue to do business with Mr. Beus?

13 A. I'm assuming it would be due to
14 payment history.

15 Q. Anything you specifically recall?

16 A. No.

17 Q. At some point in time did the bank ask
18 Jerry to refinance elsewhere?

19 A. Can you repeat that?

20 Q. At some point in time did the bank ask
21 Jerry -- did you or Ireland Bank tell Jerry you
22 would like him to refinance this loan and go
23 somewhere else?

24 A. I don't recall. It could have come
25 up.

1 Q. Do you know whether the loan
2 relationship ended by decision of Ireland Bank or
3 was it by decision of Jerry Beus to finance
4 elsewhere?

5 A. I don't recall. I wasn't the loan
6 officer at the time of the end here. I'm looking
7 through the file. The last extension was granted
8 by another loan officer by the name of Grant
9 Sitler who was pursuing the issues.

10 Q. Okay. What were the -- can you tell
11 if there were extensions of the payments due under
12 the \$372,000 note? As I look at it, it provided
13 for annual payments of 42,919 starting December 1
14 of 2002. And then the last payment would have
15 been December 1, 2008. Yet it got paid off prior
16 to that time on May 4th, 2007.

17 A. My records show that the 12/1/2006
18 payment was extended to 3/10 of 2007.

19 Q. And then was it paid?

20 A. That's probably when we got paid off.

21 Q. When the payment was extended from
22 December 1, 2006 to March 10th, 2007, was it paid
23 on March 10th, 2007, the extended payment?

24 A. I don't know without looking at the
25 payment history.

1 Q. Can you tell at what point in time
2 Grant Sitler would have become the primary offi
3 responsible for handling the loan?

4 A. Prior to January 26th, 2007. I don't
5 know exactly when.

6 Q. Was there a reason that he would have
7 become involved in your place?

8 A. That's the time period I was the
9 manager of the branch and he was to do more of the
10 loans while I was on the operations side.

11 Q. You became manager and so it came
12 under his bailiwick, if you will?

13 A. Correct.

14 MR. BUDGE: No further questions. Thank
15 you very much.

16 MR. SMITH: I would like to look at the
17 file real quick.

18 (Recess.)

19 EXAMINATION

20 BY MR. SMITH:

21 Q. Mr. McBride, I'm Steven Smith. I'm
22 the lawyer for Jerry Beus. I just have a few
23 questions to follow up on Mr. Budge's inquiries.

24 If we want to talk to somebody about
25 the end of the relationship between Jerry Beus ar

1 Ireland Bank, we should be talking to Mr. Sitler;
2 is that correct?

3 A. Correct.

4 Q. And where is he now?

5 A. He works for Ireland Bank here in
6 Pocatello.

7 Q. Okay. I would like to go back and
8 just make sure I'm clear. Is it at the time that
9 exhibits 8 and 10 were entered into -- let's start
10 with number 8. Number 8 was signed by John Souza,
11 correct?

12 A. Correct.

13 Q. As trustee of the Lynn G. Beus Trust?

14 A. Correct.

15 Q. And Mr. Jerry Beus's name is not on
16 this mortgage, correct?

17 A. Correct.

18 Q. And the same question as to exhibit
19 10, it is signed by Mr. Souza, correct?

20 A. Correct.

21 Q. And Mr. Jerry Beus's name is not on
22 this mortgage, correct?

23 A. Correct.

24 Q. And these mortgages were entered into
25 after a meeting that occurred in your office

1 between Mr. Souza, yourself and Beth Beus; is that
2 right?

3 A. Correct.

4 Q. Okay. And Beth Beus was present,
5 wasn't she, because at that time she was a
6 one-half owner of the ranch; is that right?
7 There's actually a quit claim deed in there
8 someplace.

9 MR. BUDGE: Off the record.

10 (Discussion off the record.)

11 THE WITNESS: Okay. According to the
12 preliminary title report, it shows R. M. Whittier
13 as trustee of the Lynn Beus Trust, half interest
14 each. So the trust and R. M. Whittier are --
15 were in charge of the whole property.

16 Q. (BY MR. SMITH) Let me see what you're
17 referring to. Okay. Actually it says Beth G.
18 Beus, a widow, and R. M. Whittier as trustee of
19 the Lynn G. Beus Trust, one-half interest?

20 A. Correct. I didn't notice the Beth
21 Beus part.

22 Q. Okay. And then at some point --
23 strike that. While in your presence did Beth Beus
24 quit claim her half to the trust at some point?

25 A. Yes.

1 Let me reask it maybe a better way.

2 Going back to his operating line of credit, when
3 he wanted to use money from the operating line of
4 credit did he have to get Ireland Bank's
5 permission first as to what he used it on?

6 A. No.

7 Q. Okay. As to the payoff of the
8 \$372,740 term loan, is there anything in Ireland
9 Bank's records that would indicate what that money
10 was specifically used on? Would it be in those
11 notes that we marked?

12 A. A good portion of it would be in these
13 statements.

14 Q. Okay. Now, did I understand your
15 testimony to be that you don't know how the
16 Federal Land Bank mortgage was paid off; is that
17 correct?

18 A. Correct.

19 Q. Sometime between your loan commitment
20 and the actual funding of the loan it was paid
21 off, correct?

22 A. Correct.

23 MR. SMITH: That's all I have. Thank you.

24 FURTHER EXAMINATION

25 BY MR. BUDGE:

1 Q. And what day was that?

2 A. May 6th, 2002.

3 Q. Was that the same date as your meeting
4 with Mr. Souza and Beth Beus?

5 A. It's actually dated the day prior.

6 Q. Okay. Now, you testified in response
7 to some questions from Mr. Budge about many
8 farmers were having hard times in 2002 facing debt
9 and they were terming out and paying off loans.
10 My question is, at that time did Ireland Bank
11 institute a policy to get more security on
12 outstanding loans?

13 A. When the occasion -- when the need
14 arose, yes.

15 Q. Okay.

16 A. Case by case.

17 Q. I guess what I'm interested in, was
18 Jerry Beus the only farmer in which you were
19 interested in getting additional security?

20 A. I don't recall.

21 Q. In the previous loans for Jerry Beus,
22 how much -- strike that. Of the money that was --
23 of the \$372,740 loan, did Ireland Bank make a
24 habit of knowing what Mr. Beus was using the money
25 for?

1 Q. One follow up. When Beth Beus signed
2 the quit claim deed that is in the file, did she
3 give indication to you and/or Mr. Souza, when that
4 was being discussed, that she did not claim or
5 have a half interest in the Beus Ranch?

6 A. Help me here again. Explain that a
7 little better.

8 Q. Let me rephrase it. Being in your
9 shoes as a loan officer, you get the title
10 insurance commitment and it shows half the ranch
11 is in the trust name and half in Beth Beus's name.
12 So I would guess as a loan officer, which I
13 haven't been, but I would guess you could then say
14 let's have the mortgage signed by the trust for
15 its half interest and let's have Beth sign the
16 mortgage as her half interest. Then the bank
17 would have its mortgage against the entire
18 property.

19 Or the other alternative is to have
20 Beth, if she didn't really have an interest in the
21 property, or she didn't claim an interest, simply
22 say I don't own an interest in the property. So
23 in order to clear title and get her name off and
24 have the trust be the sole owner of the property,
25 a quit claim deed could be provided, which is what

1 happened. So then the trust owns the entire
2 parcel and it would only be necessary for the
3 trustee, John Souza, to sign.

4 So I guess I'm wondering what it was,
5 if you know from your conversations, that would
6 cause Beth to say I don't really own an interest
7 in the property and so I'm happy to give a quit
8 claim deed. Or if she were claiming the opposite,
9 no, I own half the ranch, therefore I'm not going
10 to deed it over to the trust, but I'm willing to
11 sign on the mortgage to help Jerry get financing.

12 With that long background, it brings
13 me to the question, do you know why it was that
14 Beth chose to quit claim her interest in the
15 property to the trust as opposed to simply signing
16 on the mortgage?

17 A. Looking at this, I'm going to make an
18 assumption that Beth felt that that was just going
19 to make it simpler. And it may have come through
20 the title company that that would have just made
21 it a little easier for future work.

22 Q. If we can, while you have that out,
23 let's pull that deed out and let me copy it real
24 quick and mark that as exhibit 29 so it doesn't
25 get lost as a part of the other documents that we

1 copy. We'll mark the quit claim deed from Beth
2 Beus to the Lynn G. Beus Trust, dated June 6th,
3 2002, as exhibit 29.

4 (Number 29 marked.)

5 MR. BUDGE: That's all I have. Thank you
6 very much.

7 MR. SMITH: I need to ask one more
8 question.

9 FURTHER EXAMINATION

10 BY MR. SMITH:

11 Q. You said Beth may have felt it would
12 make it simpler. You didn't actually have a
13 conversation with Beth in which she told you why
14 she was quitclaiming the property?

15 A. No. I don't recall.

16 MR. SMITH: Okay. That's all I have.
17 Thanks.

18 (Deposition concluded at 1:07 p.m.)
19 (Exhibit 30 marked after deposition.)
20 (All exhibits retained by Mr. Budge.)
21 (Signature requested.)
22
23
24
25

REPORTER'S CERTIFICATE

I, Rodney Felshaw, CSR No. SRT-99,
Certified Shorthand Reporter, certify:

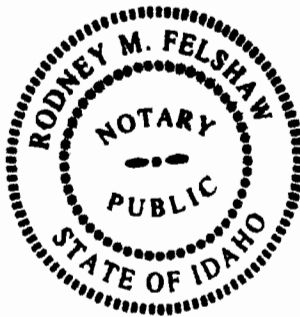
That the foregoing proceedings were taken
before me at the time and place therein set forth,
at which time the witness was put under oath by
me.

That the testimony and all objections made
were recorded stenographically by me and
transcribed by me or under my direction.

That the foregoing is a true and correct
record of all testimony given, to the best of my
ability.

I further certify that I am not a relative
or employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 17th day of July, 2009.



Rodney Felshaw

Rodney Felshaw, CSR NO. SRT-99

Notary Public

Brigham City, UT 84302

My commission expires March 31, 2015

Book 1001

7

<p>A</p> <p>ability 7:11</p> <p>able 15:1 16:16 22:2,18 25:7 29:2 31:2,20 33:10 35:8 39:25 40:18</p> <p>above-entitled 2:8</p> <p>acceptable 6:25</p> <p>account 13:6,9</p> <p>accurate 17:20 25:23</p> <p>acquainted 12:7 19:5</p> <p>actual 47:20</p> <p>add 22:6</p> <p>addendum 18:25</p> <p>addition 26:14,22</p> <p>additional 16:3 22:6,15,19 28:11 28:12,21 29:25 31:3 46:19</p> <p>address 4:19,23 5:1</p> <p>addressed 22:24</p> <p>advised 28:16</p> <p>agreed 21:11</p> <p>agreement 17:5,7 17:12,14 18:3,13 26:17,20</p> <p>agricultural 13:13 14:2 20:18 21:15 24:3</p> <p>ahead 33:22</p> <p>ahold 31:22</p> <p>allow 29:25</p> <p>alternative 48:19</p> <p>amount 14:10,24 16:2,7 20:25 21:12</p> <p>and/or 48:3</p> <p>annual 21:8 41:1 42:13</p> <p>answer 6:5,20,25 13:23 35:15</p> <p>answers 5:17 6:11</p> <p>appear 18:13 21:18 25:20</p> <p>APPEARANCES 2:10</p>	<p>appearing 9:15</p> <p>appears 18:8 25:1 26:2,4,9</p> <p>application 9:13 11:2 13:16 18:5 19:13 28:17 36:11</p> <p>applications 9:11 11:9</p> <p>apply 39:16</p> <p>approach 19:19</p> <p>approval 9:12 11:9 11:13</p> <p>approximate 14:10</p> <p>area 27:25</p> <p>arose 46:14</p> <p>arranged 31:13,23 32:2,5</p> <p>asked 9:20</p> <p>assets 26:21</p> <p>assistant 8:23 9:6</p> <p>assume 21:25 28:16 39:7</p> <p>assuming 41:13</p> <p>assumption 49:18</p> <p>attended 8:6</p> <p>attorney 4:9,13 7:3</p> <p>attorneys 37:2,4</p> <p>audible 6:6</p> <p>audibly 6:7</p> <p>auto 8:7</p> <p>available 36:5</p> <p>a.m 2:5</p> <p>B</p> <p>back 8:9 11:17 14:3 14:4 25:11 34:20 34:25 35:18 36:3 37:13 44:7 47:2</p> <p>background 8:2 49:12</p> <p>Bailey 2:3,12</p> <p>bailiwick 43:12</p> <p>balance 15:13 16:15 33:11,16</p> <p>balances 40:10</p> <p>Bancroft 8:6</p> <p>bank 4:8,9 5:2 7:22 8:12,15 11:23</p>	<p>12:5,10,13,16,22 13:4,7,21 17:2 19:9 20:18 23:5 23:21 24:14,21,22 26:3,13,25 27:22 28:9,15 29:18 31:2,20 32:23 33:8,16 34:5,16 35:3,11,21,22 38:8,16,21 39:13 41:11,17,20,21 42:2 44:1,5 46:10 46:23 47:16 48:16</p> <p>banking 9:14</p> <p>Bank's 47:4,9</p> <p>Bannock 1:3 5:11</p> <p>based 35:19</p> <p>basically 5:9 7:20 10:15</p> <p>basis 15:17</p> <p>began 12:18</p> <p>beginning 21:12</p> <p>behalf 2:2 12:5 30:19</p> <p>believe 8:11 13:6 20:21 27:5,12 31:10,14 32:13</p> <p>best 6:21</p> <p>Beth 29:6,10,22,23 30:12,15,23 31:11 31:15,24 33:7 36:20 45:1,4,17 45:20,23 46:4 48:1,11,15,20 49:6,14,18 50:1 50:11,13</p> <p>better 47:1 48:7</p> <p>Beus 1:5,6,10,11 2:16,23,24,25 4:11,11,13 5:13 7:19,23 10:16 11:2,20 12:5,8 13:3,11 14:2 15:17 17:25 18:4 18:12,12,14,19 19:7 20:3,12,19 21:22 23:21 24:4 24:15,20 25:8,10</p>	<p>26:2 27:2,17,24 28:17,20 29:7,10 30:20 31:18 33:6 33:7,15 36:20,22 37:5,17 38:7,17 38:24 39:5,14 40:10 41:9,12 42:3 43:22,25 44:13 45:1,4,13 45:18,19,21,23 46:4,18,21,24 48:1,5 50:2,2</p> <p>Beuses 5:12</p> <p>Beus's 10:1 19:12 37:2,25 44:15,21 48:11</p> <p>bill 22:22</p> <p>bills 28:4</p> <p>bit 14:16</p> <p>Boise 2:21</p> <p>book 5:19</p> <p>Box 2:14,20</p> <p>branch 9:5,6 43:9</p> <p>break 7:2,4 37:10 37:14</p> <p>bring 8:3 9:20 10:23</p> <p>bringing 14:17</p> <p>brings 49:12</p> <p>brought 7:13,17 9:22,25 10:8 11:21</p> <p>Budge 2:3,12,13 3:4,6 4:5,10,17 11:14,17 13:25 32:4,7 35:16,18 37:9,13 43:14 45:9 46:7 47:25 50:5,20</p> <p>budget 19:16,22 20:2</p> <p>Budge's 43:23</p> <p>business 4:23 5:1 7:22 8:10,11 12:13 13:4 20:11 41:12</p> <p>C</p>	<p>C 1:9 2:13,18 27:18</p> <p>call 6:19</p> <p>capsule 8:1</p> <p>Caribou 23:11,15 32:20 34:5,11,14</p> <p>carry 15:3,6 16:15</p> <p>carrying 28:2</p> <p>case 1:8 5:11 6:3,17 14:18 46:16,16</p> <p>cause 4:3 49:6</p> <p>Center 2:4</p> <p>certainly 6:25</p> <p>Certified 2:6</p> <p>changes 5:21</p> <p>charge 45:15</p> <p>CHARTERED 2:12</p> <p>check 23:11 36:2 40:15</p> <p>checking 13:6</p> <p>chose 49:14</p> <p>circumstances 12:8 27:21</p> <p>claim 45:7,24 48:2 48:4,21,25 49:8 49:14 50:1</p> <p>claiming 49:8</p> <p>clarification 25:23</p> <p>clarify 10:6,19 30:21 31:15</p> <p>clear 44:8 48:23</p> <p>closed 23:14</p> <p>Clyde 37:7</p> <p>collateral 29:25</p> <p>come 30:17 31:18 41:24 49:19</p> <p>comes 5:22</p> <p>coming 28:1</p> <p>commencing 2:4</p> <p>commitment 3:10 34:1 35:1,12 37:15,21 38:8 47:19 48:10</p> <p>committee 11:12</p> <p>common 19:20</p> <p>communications 37:7</p> <p>company 32:19</p>
---	--	---	--	---

49:20 compiled 7:21 11:20 complete 11:22 completed 8:8 10:11 33:20 completion 5:17 concluded 50:18 condition 32:24 confirm 32:8,22 confusing 6:15 conjunction 37:16 considering 33:12 consist 24:19 consistent 25:20 consolidation 22:6 contained 9:22 13:18 continue 15:24 16:19 30:1 31:2 31:12,20 41:12 continuously 8:18 conversation 30:12 30:18,22 31:10 39:12,19 50:13 conversations 29:20 39:19,22 49:5 copies 5:25 10:12 37:15,20 copy 18:3,13 24:25 34:20 36:12 37:22 37:25 38:1 40:19 49:23 50:1 corporation 33:8 correct 5:3 7:14,24 8:17 9:17 10:19 13:2 15:11,15 16:12 17:23 20:13 20:15,20 23:17 27:6,11,19 29:8 32:5 34:7 35:22 35:23 38:9,13,14 38:19 41:7,10 43:13 44:2,3,11 44:12,14,16,17,19 44:20,22,23 45:3 45:20 47:17,18,21	47:22 corrections 5:21,24 counsel 6:1 counted 22:11 County 1:3 5:11 couple 36:9 38:4 course 5:14 7:21 8:8 court 1:1 6:2 covered 10:8 covering 17:6,7,13 17:15 26:18 credit 9:12 16:18 24:9 47:2,4 crops 17:6,13,15 26:18 28:14 current 8:21 41:1 customer 12:16,22 CV-09-1822-OC 1:8 5:11 C.S.R 1:20	defendants 1:12 4:13 deny 9:12 deposition 1:15 2:1 4:6 5:4,9,14,18,25 7:1,11 9:15,16 18:8 50:18,19 describe 7:16 26:16 described 26:21 description 25:20 determine 16:16 21:8 22:18 25:7 33:10 35:19 39:25 41:5 different 12:1 16:9 27:14 40:5 directly 35:21 disbursed 23:15 disbursement 35:9 discussed 11:19 16:22 29:22 31:24 31:25 37:17,22 48:4 discussing 17:19 19:7 23:22 24:25 26:10 39:2 discussion 11:16 30:6 35:17 45:10 distance 6:20 DISTRICT 1:1,2 document 19:2 documents 3:13 7:20 9:19 10:5,8 11:22 31:14 35:6 49:25 doing 25:13 Doug 1:6 2:24 4:11 duces 4:7 9:17,20 due 21:10 28:13 41:13 42:11 duly 4:2 duties 9:14 11:11	east 2:3 5:13 educational 8:2 effect 33:19 employee 12:10 employer 5:2 enable 19:8 encumbrance 38:12 encumbrances 33:2 ended 12:25 20:11 42:2 ENNIS 2:17 entered 44:9,24 entire 48:17 49:1 equipment 17:6,13 17:16 26:18 28:13 estate 18:11,22 27:9 28:25 30:19 31:8 estimate 6:19 exact 23:21 exactly 28:23 43:5 Examination 3:4,5 3:6,7 4:16 43:19 47:24 50:9 excuse 6:11 14:13 26:2 32:4 35:1 executed 27:18 33:6 exhibit 18:8,24 20:6 20:8,16,17 22:8 22:25 23:19,22 24:24 25:14 26:1 26:5,7,10 27:5,8,9 27:12 28:3 34:8,9 35:6 37:19,24 38:13 39:3 40:2 40:24 44:18 49:24 50:3,19 exhibits 3:9,14 37:12 44:9 50:20 existence 36:7 existing 33:2 experience 8:14 explain 23:10 25:15 27:21 48:6 explained 31:1 extend 18:25 extended 42:18,21 42:23	extension 42:7 extensions 42:11
F				
face 21:15 facing 28:1 46:8 fact 17:24 28:13 32:9,22 35:10 facts 5:9 familiar 17:24 19:2 family 5:12 far 20:11 24:20 farm 13:5 17:25 18:9 20:8 29:2 farmer 46:18 farmers 27:25 46:8 father's 18:21 favor 26:3 February 9:2 Federal 19:9 33:7 33:16 34:5,16 35:3,11,22 38:8 47:16 feed 17:6,13,15 26:19 Felshaw 1:20 2:5 felt 49:18 50:11 field 8:9 file 3:13 7:13,18 9:22,25 10:4,9,15 11:3,19,21 12:1 13:19 15:21 17:1 18:15 22:19 33:11 35:2,20,25 36:5,7 37:22 38:1 39:9 39:10 40:4 42:7 43:17 48:2 files 14:6 22:2 final 21:10,20 33:23 34:2,25 35:13 finance 8:10,12 31:2,20 42:3 financial 19:15,22 20:2 22:23 financing 49:11 find 5:9 40:16 fine 4:21 finish 6:12				

first 4:2 12:7 13:25 14:7 26:5,24 27:4 27:5,12 28:2 34:9 38:17,22 47:5 follow 43:23 48:1 following 30:18,22 follows 4:3 follow-up 38:4 force 33:24 form 32:1 forward 14:17 15:18,24 16:19 24:16 four 22:11,12 full 4:18 fully 6:16 funding 47:20 funds 18:20 22:16 22:19 23:5,8,15 25:4 33:15 35:10 further 3:6,7 19:1 43:14 47:24 50:9 future 6:2 49:21	graduating 8:16 Grant 42:8 43:2 granted 42:7 grinder 14:14 17:9 17:17 guess 6:22 46:17 48:12,13 49:4	indicate 29:1 33:18 33:25 38:5 47:9 indicated 16:14 28:21 29:24 indicates 33:23 indication 48:3 individually 1:5,6 1:11 information 10:17 10:23 13:15 19:13 19:20 initial 11:2 initially 13:11 initials 21:18 inquiries 43:23 inquisitive 29:23 institute 46:11 instrument 34:24 35:4 insurance 37:15 48:10 interest 21:3 24:1 45:13,19 48:5,15 48:16,20,21,22 49:6,14 interested 46:17,19 interrupt 6:10 involved 43:7 involvement 30:6,8 Ireland 4:8,9 5:2 7:22 8:12,14 12:13 20:18 23:21 24:14,21,22 26:3 28:9 29:18 31:20 38:16,21 39:13 41:21 42:2 44:1,5 46:10,23 47:4,8 issues 6:8 42:9 ISU 8:10,16 items 9:21	21:22 23:21 24:4 27:1,25 28:4,10 28:16,20 29:1,4,9 30:1,12,13,23 31:2,12,17,22 32:2 33:12,15 36:10 37:5,17,25 38:24 39:5,14,19 41:9,18,21,21 42:3 43:22,25 44:15,21 46:18,21 49:11 Jerry's 29:22 job 8:12 John 1:9 27:18 29:10,22 30:15,18 30:23 31:10,11,18 32:3,4,5 36:24 44:10 49:3 Jones 2:22 4:9 7:3 JUDICIAL 1:1 July 1:16 2:5 jump 23:19 25:11 June 10:11 20:19 23:23 26:3,17 29:14 34:15 35:14 41:8 50:2	35:22 38:8 47:16 lawyer 43:22 lease 18:3,9,13,25 20:8,14 leased 18:1 leasing 18:21 led 31:16 ledger 40:8,19 lending 11:12 lessor 18:12 letter 34:10 letters 25:15,19 let's 11:14,17 15:24 16:19 23:19 25:11 27:4 37:9,13 44:9 48:14,15 49:23 lien 32:23 38:18,22 limit 11:12 limitations 7:10 line 9:13 16:18 22:20 24:8,11 28:6 47:2,3 liquidating 39:5 listed 9:21 listening 30:11 litigation 5:10 little 14:16 48:7 49:21 livestock 17:6,13,15 26:18 28:14 39:6 39:16 LLP 2:17 loan 7:18,23 8:24 9:6,10,22,25 10:1 10:4,8,10,10,12 10:14,15,21,22,24 11:1,2,6,9,9,11,19 11:23,24,25 12:2 12:11 13:13,16 14:1,7,8,9,10,16 14:19 15:2,5,8,10 15:13,25 16:15,17 18:5,15 19:12,21 20:4,17,22,23 21:1,5,14,16 22:3 23:19,20 24:3,7 24:15 25:5 28:3 28:17 33:12,17,20
G	H	J	K	L
G 1:10 27:17,24 30:20 33:6,7 36:22 38:17 44:13 45:17,19 50:2 gas 22:22 Gem 8:5 general 9:8 18:18 generally 7:16 11:19 getting 46:19 give 5:7 6:12 7:11 8:1 9:8 14:16 48:3 49:7 given 27:17 go 4:21,22 6:4 11:14,17 33:22 36:3 37:13 41:22 44:7 going 38:6 47:2 49:9,17,18 good 47:12 government 17:14 graduated 8:11	habit 46:24 half 45:13,24 48:5 48:10,11,15,16 49:9 handle 11:8 handled 12:4 20:22 handling 43:3 happened 29:21 31:7 49:1 happy 6:18 49:7 hard 28:1 46:8 HAWLEY 2:17,17 hay 14:14 17:8,17 head 6:8 13:22 hear 13:23 held 8:25 29:3 help 9:13 48:6 49:11 hesitate 6:17 he'll 5:16 6:8 high 8:3,5,6 history 14:16 40:1 40:6,20 41:14 42:25 Hmm 10:10 15:3 28:23 husband 33:7	January 20:9 43:4 Jerry 1:11 2:16,25 4:13 7:18 10:1,16 11:2,20 12:8 13:11 14:1 17:25 18:12,14,19 20:18	Kenworth 17:8,16 key 14:17 know 12:12 13:8 14:9 23:7 24:6,21 25:4 28:23 33:14 39:5,8 40:25 42:1 42:24 43:5 47:15 49:5,13 knowing 46:24 knowledge 6:21 13:3 19:10 known 5:13 38:7	land 18:1 19:9 23:11,15 29:2 32:9,20 33:8,16 34:5,16 35:3,11

33:24 34:6 35:20 35:22,25 36:11,14 37:17 39:6,16 40:9,20,24 41:2 41:22 42:1,5,8 43:3 46:23 47:8 47:19,20 48:9,12 loaned 33:15 loans 9:12 10:12,16 10:17,18 12:4,23 13:5 14:17,20 15:16,21 16:23 17:19 18:18 19:6 19:18 20:12 24:19 25:13,21 28:4,8 28:10 35:9 36:19 36:22 37:2 38:24 39:12,14,20 40:21 40:22 41:8 43:10 46:9,12,21 locate 40:18 long 8:25 49:12 longer 12:22 36:7 38:12 look 20:1 23:18 24:24 25:14,22 26:1,7 27:4,8 34:9 34:13,25 35:1 36:11 37:19,24 39:3 41:4 42:12 43:16 looked 39:1 looking 18:7 20:7 20:16 22:9,25 27:12 32:12,14 42:6,24 49:17 lost 49:25 Lynn 1:10 18:12 27:17,23 30:20 33:6 36:22 38:17 44:13 45:13,19 50:2	making 18:17 24:15 manager 9:5 43:9 43:11 March 42:22,23 mark 49:24 50:1 marked 18:8 23:1 37:12 47:11 50:4 50:19 matter 2:8 7:25 mature 21:13 McBride 1:15 2:1 3:3,14 4:1,7,8,22 6:15 7:9 8:22 11:18 17:1 20:6 25:19 32:7 35:19 36:19 37:14 43:21 McBride's 3:13 mean 15:22 32:2,4 mechanic 8:9 mechanics 8:7 meeting 29:17,21 30:5 31:13,23 32:2 44:25 46:3 meetings 29:9 memory 14:7 mental 7:9 mentioned 35:2 Middle 4:20 mind 5:22 moment 11:15 25:18 money 16:3,4 22:6 23:8 46:22,24 47:3,9 monies 19:8 mortgage 19:8 26:2 26:3,4,8 27:5,6,9 31:8,24,25 33:6 33:11 34:17,20 35:3,11 38:6,9 44:16,22 47:16 48:14,16,17 49:11 49:16 mortgages 25:16 26:14,22 27:13,22 30:19 38:17 44:24 mother 29:5,6 move 16:25 24:15	N N 3:1 name 4:18,20 42:8 44:15,21 48:11,11 48:23 necessary 49:2 need 25:11 31:18 31:24 46:13 50:7 needed 22:23 29:24 31:3 needing 28:12 needs 25:23 Nelson 37:7 new 16:4 22:20 24:10,15 nodded 13:22 nodding 6:8 North 8:5 Notary 1:21 2:6 note 14:3,12,22 16:1,3,6,14,15 17:4 21:19 22:4,4 22:5,5,7,13 23:5 23:25 24:25 26:5 26:10 27:6,7,8 28:3 34:23 39:2 40:2 42:12 notes 13:1 16:9,22 17:3,11 22:12 24:13,18 25:16 26:13,22 27:1,14 27:23 28:18 29:14 39:1 47:11 notice 9:16 45:20 November 25:1 39:4 number 34:24 35:4 35:7 44:10,10 50:4 numbers 22:7 Nye 2:3,12	occurred 29:17 44:25 office 25:15 36:3 44:25 officer 4:7 8:24 9:6 9:10 11:1,11 12:11 20:22 42:6 42:8 43:2 48:9,12 offices 2:2 okay 7:5 13:8 14:6 14:15 16:5 17:10 18:10 20:5 30:1 31:12 32:7 33:25 34:22 35:8 37:9 39:25 42:10 44:7 45:4,11,17,22 46:6,15 47:7,14 50:16 old 10:12 Olson 2:3,12 ones 14:18 one-half 45:6,19 ongoing 12:19 operate 28:6 operating 10:21,24 11:24 12:2 14:9 15:5,8,16,21 16:14,18 18:17,20 19:6 22:20 24:8 24:10,15 28:6 35:25 39:2,6 47:2 47:3 operation 13:5 14:2 17:25 29:23 30:1 31:13 operations 43:10 opportunity 5:20 opposed 49:15 opposite 49:8 order 31:19 38:23 39:6 48:23 ordinary 7:21 outstanding 24:19 46:12 overview 9:8 owned 31:6 32:9,22 owner 45:6 48:24 owns 49:1	P page 3:3 21:20 34:10,13,19,23 paid 10:12,13,18 12:23 13:1 16:23 21:6 23:1,5 34:6 35:5,11 38:11 39:23 40:3,24 41:2 42:15,19,20 42:22 47:16,20 parcel 49:2 part 14:2 18:5,15 19:12 33:14 35:9 38:13 45:21 49:25 participation 30:5 particular 10:4,9 10:14 11:6 14:12 18:20 21:1,5 22:3 22:13 23:19 25:13 parties 6:1 pay 21:11 22:22 25:5 28:4 33:16 35:21 39:6 paying 46:9 payment 21:9,12 25:8 33:9 35:21 40:1,6,20 41:4,14 42:14,18,21,23,25 payments 17:14 19:8 21:9,11 41:1 42:11,13 payoff 23:8 25:1 35:25 39:4 47:7 pending 5:11 percent 21:4 24:1 period 10:3,7 12:20 15:12 19:1 21:9 43:8 permission 47:5 personal 7:2 18:10 personally 12:12 pertain 10:1 pertaining 10:17,24 12:2 13:5 18:20 phone 31:23 physical 7:10 picture 39:13 place 4:6 6:20 43:7
---	--	---	--	--

plaintiffs 1:7 2:2,11 4:11 please 20:6 36:18 pledged 17:21 26:12,21 27:16 Pocatello 2:4,15 44:6 point 17:18 18:1 24:11,20 28:7 39:12 41:17,20 43:1 45:22,24 policy 3:10 33:23 34:2,25 37:16,21 38:13,15 46:11 portion 35:10 47:12 pose 6:15 position 8:21 9:1,3 28:9 38:18,22 possible 35:24 Possibly 40:14 preceded 14:20 28:18 prefer 6:23 preliminary 5:7 7:25 32:15,21 45:12 presence 21:25 45:23 present 2:22 4:8,10 4:12,12 29:10,11 30:9,10,13,23 45:4 presented 6:2 presently 9:9 president 8:23 9:7 9:10 previous 15:9 46:21 previously 18:7 primarily 11:5 primary 43:2 prior 9:3 12:12 14:5 22:7,12 24:14 29:13,16 31:11,13 42:15 43:4 46:5 probably 42:20 proceed 7:7 proceeding 6:3	proceeds 39:16 process 6:5 7:7 9:11 processing 11:8 produced 37:25 40:12 promissory 14:22 16:21 17:3,11 21:19 24:13,18 property 17:21 18:21 26:9,25 27:16 29:24 31:6 31:19 32:23 33:2 38:7,18,23 45:15 48:18,21,22,24 49:7,15 50:14 propose 31:5 provide 5:19 13:15 19:14,15,19,22 25:24 28:21 32:23 40:19 provided 5:25 9:17 18:4,14 20:3 22:16 25:15 28:11 36:10 40:12 42:12 48:25 providing 15:16 18:19 20:12 Public 1:21 2:6 pull 49:23 purpose 5:8 6:2 14:13 15:1 16:2 18:19 21:14 22:3 24:6 purposes 20:18 21:15 25:16 pursuing 42:9 put 19:25 20:1 29:2 31:5,19 32:10 36:17 p.m 50:18 P.O 2:14,20	25:12 36:9 38:4 43:14,23 46:7 quick 43:17 49:24 quit 45:7,24 48:2 48:25 49:7,14 50:1 Quitclaim 3:12 quitclaiming 50:14	38:16 records 13:21 14:11 24:23 33:18 35:24 40:1 41:5 42:17 47:9 referring 15:5 45:17 refinance 41:18,22 refinanced 22:12 refinancing 23:14 reflect 4:5 10:16 14:7,11 16:3 24:24 33:1,5 35:25 40:6,9,20 reflected 10:4 11:3 15:20 22:8 34:5 35:5 38:8 39:4 reflecting 34:16 reflects 24:25 38:15 refresh 14:7 regards 37:8 relating 4:2 6:3 relationship 12:13 12:19,25 20:11 42:2 43:25 relative 5:12 37:2 release 34:14,16 released 34:21 relevant 5:10 relied 32:21 remember 5:22 6:24 removed 35:13 renew 16:2 renewal 10:13 repayment 17:2,22 26:13 repayments 27:1 repeat 39:17 41:19 rephrase 6:17 10:7 48:8 report 32:12,15,21 33:1 34:4 35:13 45:12 REPORTED 1:19 reporter 2:6 5:15 6:5 reports 38:5	representative 18:11 representing 4:10 37:5 request 13:13 requested 28:10 50:21 required 38:22 39:15 requirement 19:21 requiring 28:15 respect 7:22 11:23 40:23 response 6:13 9:16 46:6 responsibilities 9:9 responsible 11:5 43:3 restructure 22:4 restructuring 24:14 retained 3:14 50:20 return 37:25 returned 8:9 returns 3:11 19:17 19:23 20:2 36:10 review 25:19 reviewed 18:25 right 22:11 45:2,6 rise 31:8 Rodney 1:20 2:5 role 30:3 Roto-Grind 17:8,16 routine 9:14 R.M 18:10
R				
R 45:12,14,18 Racine 2:3,12 ranch 5:12,13 38:7 45:6 48:5,10 49:9 RANDALL 2:13 Randy 4:10 rate 21:3 24:1 read 5:20 18:9 real 17:20 26:25 27:9 28:24 30:19 31:8 38:7,18,23 43:17 49:23 really 28:23 48:20 49:6 reask 47:1 reason 38:16 41:11 43:6 reasons 7:2 recall 6:23,24 14:1 19:10 28:20 29:20 30:4,7 38:21,25 39:24 41:15,24 42:5 46:20 50:15 received 23:5 Recess 37:11 43:18 recognize 20:17 23:20 25:14 34:10 37:20 38:2 recollection 6:22 19:6 39:11,18 41:3 record 4:5,14,19 5:16 6:5 11:14,16 11:18,18,22 14:3 35:16,17,18 37:14 38:9 40:4,5 45:9 45:10 recorded 34:14				
Q				
question 6:4,12,18 44:18 46:10 49:13 50:8 questions 5:15 6:6 6:10,14,19 7:6 8:1				
S				
says 45:17 school 8:3,5,6,10 second 4:24 16:9,11 16:15 23:20 26:8 26:10 33:20,21 34:13 38:18 secure 26:22 27:14 33:8 secured 26:5 27:6,9 27:22 security 17:1,5,5,7 17:10,12,14,21				

23:18 25:12 26:9 26:12,17,20 27:1 27:23 28:11,12,22 28:24 29:2 31:3,6 31:19 32:10 38:7 46:11,19 see 14:20,24 25:23 25:25 34:15,18,20 35:3 40:15 45:16 seen 19:2 20:10,14 sell 39:15 semi-tractor 14:14 17:8 senior 8:23 9:10 separately 40:13 seven 21:11 sheet 40:8,20 shoes 48:9 short 37:9 Shorthand 2:6 show 42:17 showing 10:13 shown 35:12 38:12 shows 34:24 45:12 48:10 side 43:10 sign 48:15 49:3,11 signature 21:20,21 50:21 signed 21:24 24:4 30:18 31:8 44:10 44:19 48:1,14 signing 29:14,16 31:14 49:15 simpler 49:19 50:12 simply 15:9 48:21 49:15 Sitler 42:9 43:2 44:1 SIXTH 1:1 Smith 2:18 3:5,7 4:14 13:23 32:1 43:16,20,21 45:16 47:23 50:7,10,16 Soda 4:24 5:13 9:5 29:18 sole 48:24 somebody 43:24	someplace 45:8 Sorry 13:24 sort 40:9 source 23:7 25:4,9 South 4:24 Souza 1:9 27:18 29:10 30:15,18,23 31:11,18 36:24 37:3 44:10,19 45:1 46:4 48:3 49:3 Souza's 30:3 specifically 41:15 47:10 speculate 6:22 Spokane 33:8 Springs 4:24 5:13 9:6 29:18 SRT-99 1:20 stamp 23:1 stamped 10:13 start 44:9 started 8:15 starting 8:2 42:13 state 1:2 2:7 4:18 8:7 stated 21:15 statement 19:16,22 20:2 22:23 statements 47:13 STEPHEN 2:18 Steve 4:14 Steven 43:21 sticker 20:1 36:17 stop 16:8 Street 2:19 strike 20:7 24:24 45:23 46:22 subpoena 9:17,20 subsequent 39:22 subsequently 16:23 sufficient 28:14 suggestions 5:8 Suite 2:4,19 summary 8:2 support 13:16 20:3 36:11 sure 6:11,23 10:20	14:4 39:9 44:8 sworn 4:2 <hr/> T <hr/> take 5:15,16 7:2,3 9:11 20:9 25:18 27:8 37:9 38:6 taken 2:1 5:4 17:10 37:21 38:1 talk 6:9 29:4 43:24 talked 26:5 talking 44:1 tax 3:11 19:17,22 20:2 36:10 taxes 36:15,16 tecum 4:7 9:17,21 tell 4:2 6:17 14:8,17 15:1 16:25 21:1 22:2 32:17 35:8 36:12 39:9 41:21 42:10 43:1 teller 9:13 term 7:18 10:21 11:23,25 14:9 15:3 16:14 21:6 28:3,3 35:20 47:8 termed 15:13 terming 46:9 testified 4:3 20:21 46:6 testimony 3:3 47:15 Thank 43:14 47:23 50:5 Thanks 50:17 things 31:15 think 16:10 29:4 30:13 34:10 37:10 thought 31:11 TIM 3:3 4:1 time 4:6 5:24 6:19 7:1,8 10:3,7 12:11 12:20,22 13:16 17:18 18:1 19:1 19:25 21:6 24:20 26:25 28:5 30:14 33:12,24 35:13 41:2,17,20 42:6 42:16 43:1,8 44:8	45:5 46:10 times 28:1 46:8 title 3:10,10 23:12 23:15 32:8,12,15 32:19,20 33:1,23 34:4,5,11,14,25 37:15,16,20,21 38:5,12,15 45:12 48:9,23 49:20 today 5:22 7:11 told 16:10 50:13 Tom 1:15 2:1 4:7 Tommy 4:22 tractor 14:19 transpired 28:24 TROXELL 2:17 Trusee 1:9 trust 1:10 18:22 27:17,24 29:3,11 30:4,20 31:6,9,19 32:9,22 36:22 38:6,17 44:13 45:13,14,19,24 48:11,14,24 49:1 49:10,15 50:2 trustee 18:11 27:19 29:11 30:4 36:24 37:3 44:13 45:13 45:18 49:3 truth 4:2 try 6:10 turn 20:6 34:8,19 Turning 18:24 two 8:8 16:9 17:2 24:13,18 25:14,19 26:13 27:22 28:8 30:19 40:21 type 13:13 types 19:13 <hr/> U <hr/> Uh-huh 30:16 41:6 unable 35:19 understand 6:16 47:14 understanding 11:20 18:18 23:13 31:17 41:7	University 8:7 upcoming 19:16 upside 18:9 use 47:3 <hr/> V <hr/> vice 8:23 9:7,10 vicinity 12:9 visit 7:3 votec 8:7 vs 1:8 <hr/> W <hr/> wait 6:11 33:20 want 7:2 14:15 15:23 39:3 43:24 wanted 47:3 wasn't 30:23 40:24 42:5 45:5 way 47:1 went 8:3,5,10 33:15 35:21 West 4:24 we'll 7:3 50:1 we're 19:19 22:25 we've 16:22 17:19 18:7 19:7 23:22 24:25 Whittier 18:10 45:12,14,18 widow 45:18 wife 33:7 willing 49:10 wish 5:21 Witness 13:22,24 32:5 45:11 wondering 49:4 work 8:14 12:15 14:4 32:8 49:21 worked 8:8 works 44:5 wouldn't 15:20 write 5:18 <hr/> X <hr/> X 3:1 <hr/> Y <hr/> Yeah 41:6
---	---	--	---	--

year 8:8 12:10 15:9
15:9,17,17 19:16
36:12,14 40:9,9

\$

\$111,200 33:9
\$141,783 14:25
16:13
\$16,106 14:12
\$235,000 23:25
27:6,10
\$372,000 42:12
\$372,700 40:23
\$372,740 21:2
46:23 47:8
\$42,919.09 21:12

1

1 42:13,15,22
1st 16:1 20:9 21:13
21:13
1:07 50:18
10 26:7 27:8,10
44:9,19
10th 34:15 42:22,23
10:55 2:5
1000 2:19
12/1/1999 17:12
12/1/2006 42:17
12/1/99 17:5
12/31/1999 17:7,15
13th 35:14
1391 2:14
141,783 16:11
1617 2:20
167,800 16:7,16
1984 14:13 17:8
1990 14:13
1994 17:16
1999 12:10 14:4,19
15:17 16:1 17:4

2

2A 2:4
2000 12:10,18
13:12 14:23 15:3
15:25 16:6,10,13
16:15,21 17:3,11
17:19

2001 16:18
2002 3:11 10:11,16
10:18 14:18,21
16:23 19:18 20:4
20:19 21:13 23:23
24:8 25:2,16 26:4
26:18 28:9,18
29:15 32:18 33:3
33:12,15 34:2,15
35:3,9,12,14
36:11,13,14,16
37:17,25 38:24
39:4,12,20,23
40:2,21,24 41:9
42:14 46:2,8 50:3

2006 42:22
2007 13:2 20:9 23:2
40:3,25 42:16,18
42:22,23 43:4
2008 21:13 42:15
2009 1:16 2:5
201 2:3
21st 33:3 34:1 35:2
35:12
26 34:8,9 35:6
26th 43:4
27 3:10 37:12,19
38:13
28 3:11 37:12,24
29 3:12 49:24 50:3
50:4
29th 25:2 39:4

3

3 18:8
3/10 42:18
30 3:13 50:19
30,250 16:2
31st 17:4
37 3:10,11
372,740 27:7

4

4 3:4 18:24
4th 23:1 40:3,25
42:16
42,919 42:13
43 3:5

48 3:6

5

5 20:8
5th 14:23 15:25
16:6,10,13,21
17:2,11
5/21 32:18
5/4 13:2
50 3:7,12,13

6

6 20:6,16,17 22:8
22:25 23:22 26:5
28:3 40:2,24
6th 46:2 50:2
6/13/2002 34:3,4
6020002315 22:5
6020002480 22:4
6020002482 22:5
602002303 22:5
60294 34:24

7

7 1:16 2:5 25:14
7th 10:11 20:19
23:23 26:4,17
29:14 41:8
7.75 21:4 24:1

8

8 26:1 27:5,12 44:9
44:10,10
83204-1391 2:15
83276 4:25
83701-1617 2:21
877 2:19

9

9 23:20 24:24 26:10
39:3
97 8:11,15
98 4:24
99 12:18 13:12 14:8
17:19



7. **LOAN PURPOSE.** The purpose of this Loan is RESTRUCTURE NOTE 8020002480, 8020002482, 8020002315 AND 8020002303 AND ADDITIONAL MONEY FOR DEBT CONSOLIDATION.

8. **SECURITY.** This Loan is secured by separate security instruments prepared together with this Note as follows:

Document Name

Security Agreement - JERRY BEUS

Mortgage - 3125 WOOD CANYON RD.
P.O. BOX 712

Parties to Document

JERRY BEUS

The Lynn G. Beus Trust

9. **DEFAULT.** I understand that you may demand payment anytime at your discretion. For example, you may demand payment in full if any of the following occur:

- A. **Payments.** I fail to make a payment in full when due.
- B. **Insolvency.** I make an assignment for the benefit of creditors or become insolvent, either because my liabilities exceed my assets or I am unable to pay my debts as they become due.
- C. **Death or Incompetency.** I die or am declared legally incompetent.
- D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Note.
- E. **Other Documents.** A default occurs under the terms of any other transaction document.
- F. **Other Agreements.** I am in default on any other debt or agreement I have with you.
- G. **Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. **Judgment.** I fail to satisfy or appeal any judgment against me.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.
- K. **Property Transfer.** I transfer all or a substantial part of my money or property.
- L. **Property Value.** The value of the Property declines or is impaired.
- M. **Erosion.** Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained by federal law.
- N. **Insecurity.** You reasonably believe that you are insecure.

10. **ASSUMPTIONS.** Someone buying the Property cannot assume the obligation. You may declare the entire balance of the Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, or transfer of the Property. However, I may sell or similarly dispose of any Products that are farm products or inventory derived from farm products.

11. **WAIVERS AND CONSENT.** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. **Additional Waivers By Borrower.** In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

- (1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.
- (2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
- (3) You may release, substitute or impair any Property securing this Note.
- (4) You, or any institution participating in this Note, may invoke your right of set-off.
- (5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.
- (6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

B. **No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or other Loan documents, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

12. **REMEDIES.** After I default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following:

- A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Note immediately due.
- B. **Sources.** You may use any and all remedies you have under state or federal law or in any instrument securing this Note.
- C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.
- D. **Payments Made On My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.
- E. **Attachment.** You may attach or garnish my wages or earnings.
- F. **Set-Off.** You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

G. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

13. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. To the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees you incur to collect this Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

14. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a party.

15. **INSURANCE.** I understand and agree that any insurance premiums paid to insurance companies as part of this Loan Agreement will involve money retained by you or paid back to you as commissions or other remuneration.

A. **Property Insurance.** I will insure or retain insurance coverage on the Property and abide by the insurance requirements of any security instrument securing this Loan.

B. **Insurance Warranties.** I agree to purchase any insurance coverages that are required, in the amounts you require, as described in this or any other documents I sign for this Loan. I will provide you with continuing proof of coverage. I will buy or provide insurance from a firm licensed to do business in the State where the Property is located. If I buy or provide the insurance from someone other than you, the firm will be reasonably acceptable to you. I will have the insurance company name you as loss payee on any insurance policy. You will apply the insurance proceeds toward what I owe you on the outstanding balance. I agree that if the insurance proceeds do not cover the amounts I still owe you, I will pay the difference. I will keep the insurance until all debts secured by this agreement are paid. If I want to buy the insurance from you, I have signed a separate statement agreeing to this purchase.

C. **Prepayment.** If I prepay in full or if I default and you demand payment of the unpaid balance, I may be entitled to a partial refund credit of any prepaid, unearned insurance premiums. This refund may be obtained from you or from the insurance company named in my policy or certificate of insurance.

16. **APPLICABLE LAW.** This Note is governed by the laws of Idaho, the United States of America and to the extent required, by the laws of the jurisdiction where the Property is located.

17. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** My obligation to pay this Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on this Loan, or any number of us together, to collect this Loan. Extending this Loan or new obligations under this Loan, will not affect my duty under this Loan and I will still be obligated to pay this Loan. The duties and benefits of this Loan will bind and benefit the successors and assigns of you and me.

18. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note is the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

19. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

20. **NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one party will be deemed to be notice to all parties. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

21. **CREDIT INFORMATION.** I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

22. **ERRORS AND OMISSIONS.** I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you or any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

23. **SIGNATURES.** By signing, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

BORROWER


JERRY BEUS

LENDER:

Ireland Bank


Tom McBride, AVP/Lender Officer

(Attest)



Home Office • 33 Bannock Street • Malad City, Idaho 83252 • 766-2211

Aberdeen Office
386 N. Main
Aberdeen, ID 83210
397-7100

Carry Office
20449 North Main
Carry, ID 83320
823-9300

Downey Office
17 East Center
Downey, ID 83234
897-5226

Grace Office
1 North Main
Grace, ID 83241
425-3066

Inkom Office
110 Hwy. 30 East
Inkom, ID 83245
775-3354

Lava Office
146 East Main
Lava, ID 83246
776-5656

Mammoth Office
208 South Main
Mammoth, ID 83251
588-2100

Montpelier Office
420 North 4th Street
Montpelier, ID 83254
847-3100

Pocatello Poleline Office
2715 Poleline Road
Pocatello, ID 83201
233-1816

Pocatello Yellowstone Office
486 Yellowstone Avenue
Pocatello, ID 83201
233-0022

Preston Office
85 East Oneida
Preston, ID 83263
852-2400

Soda Springs Office
98 West 2nd South
Soda Springs, ID 83276
547-2191

September 24, 2008

Racine Olson Nye Budge & Bailey Chartered
201 East Center Street
P.O. Box 1301
Pocatello, ID 83204

Re: Lynn Beus Trust

Dear Mr. Shaffer

This letter is in regards to the faxed request in regards to two mortgages, No.s 166205 and 166206.

The loans pertaining to theses mortgages were to term out past operating lines of credit and the second one was for cross collateralization of a new operating line of credit.

The new operating line of credit was paid off by Jerry Beus. The term loan was paid off by The Lynn G. Beus Trust.

If you have any questions or concerns, please contact me at 547-2191.

Sincerely,

Tom McBride
Sr. Loan Officer/AVP

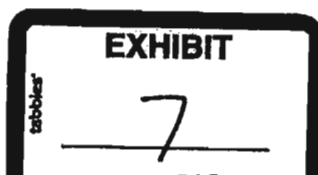


EXHIBIT "G"



Home Office • 33 Bannock Street • Malad City, Idaho 83252 • 766-2211

Aberdeen Office
386 N. Main
Aberdeen, ID 83210
397-7100

Carey Office
20449 North Main
Carey, ID 83320
823-9300

Downey Office
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Downey, ID 83234
897-5226

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1 North Main
Grace, ID 83241
425-3066

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Inkom, ID 83245
775-3354

Lava Office
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Lava, ID 83246
776-5656

Mackay Office
208 South Main
Mackay, ID 83251
588-2100

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Montpelier, ID 83254
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Pocatello Poeline Office
2715 Poeline Road
Pocatello, ID 83201
233-1816

Pocatello Yellowstone Office
486 Yellowstone Avenue
Pocatello, ID 83201
233-0022

Preston Office
85 East Opalida
Preston, ID 83263
852-2400

Soda Springs Office
98 West 2nd South
Soda Springs, ID 83276
547-2191

October 14, 2008

Racine Olson Nye Budge & Bailey Chartered
201 East Center Street
P.O. Box 1301
Pocatello, ID 83204

Re: Lynn Beus Trust

Dear Mr. Shaffer:

This letter is in regards to the phone request that you asked for on October 14, 2008 dealing with the origination of the to loans/mortgages in question.

Jerry Beus originated the two loans/mortgages. The smaller loan was his current operating line of credit and the other was a combination of some loans that Jerry needed to have restructured.

Again, Jerry paid off the smaller loan/mortgage. The other note was paid through Caribou Land Title and on the memo section of the check the following is stated;

Loan ***** Jerry Beus #17383 The Lynn G. Beus Trust

Therefore, I am assuming that the Trust paid that loan/mortgage off.

If you have any further questions or concerns, please contact me at 547-2191.

Sincerely,

Tom McBride
Sr. Loan Officer/AVP

REAL ESTATE MORTGAGE 166205

THIS MORTGAGE, made by THE LYNN G. BEUS TRUST
of the County of CARIBOU, State of IDAHO, as Mortgagor, and IRELAND BANK, a corporation,
at its office in SODA SPRINGS,

WITNESSETH:

That the said Mortgagor hereby grants, bargains, sells, and conveys unto the said Mortgagee, its successors and assigns forever, the following described real property, situated in CARIBOU County, State of Idaho, to-wit:

TOWNSHIP 8 SOUTH, RANGE 42 EAST OF THE BOISE MERIDIAN:

SECTION 25: S½SW¼.
SECTION 26: S½SE¼, SW¼SW¼.
SECTION 34: E½NE¼, E½SW¼, SE¼.
SECTION 35: N½, SW¼, W½SE¼.

TOWNSHIP 9 SOUTH, RANGE 42 EAST OF THE BOISE MERIDIAN:

SECTION 2: LOTS 2, 3, 4, 5, 6 and 7, SW¼NE¼, S½NW¼, N½SW¼, NW¼ SE¼.
SECTION 3: LOTS 1, 2 and 3, S½NE¼, SE¼NW¼, S¼.
SECTION 10: N½N¼, SE¼NE¼.
SECTION 11: LOTS 2 and 3, S½NW¼, W½SW¼.

TOGETHER WITH all water, water rights, ditch, ditch rights, improvements, privileges and appurtenances thereunto belonging and the rents, issues and profits thereof.

Said Mortgagor hereby warrants the title to said land and appurtenances against all persons whomsoever and agrees to defend the same.

This grant is intended as a mortgage:

(1) To secure the payment of the principal sum of THREE HUNDRED SEVENTY TWO THOUSAND SEVEN HUNDRED FORTY DOLLARS AND 00/100 + + + + +

DOLLARS (\$ 372,740.00) lawful money of the United States of America, evidenced and according to the terms of a Promissory note executed and delivered on the 7th day of JUNE, 2002, XX by Mortgagor as maker, to the Mortgagee herein as payee, with both principal and interest being payable at the Mortgagee's office above referenced, with the final payment, if not sooner paid, to be due and payable on the 1st day of DECEMBER, XX 2008.

(2) To secure the payment of any and all further sums as may be hereafter loaned or advanced Mortgagor by Mortgagee during the existence of this Mortgage, whether represented by notes, open accounts, drafts, or otherwise, it being the express intention of the parties that this mortgage shall stand as continuing security for all such loans, together with interest thereon and all costs, disbursements and attorney fees that become payable by Mortgagor here under.

Mortgagor covenants and agrees to keep the buildings located upon the premises insured, in a company satisfactory to Mortgagee, for at least \$ 126,600.00 with loss payable to Mortgagee, and further that each policy or renewal thereof shall be delivered to said Mortgagee. In the event Mortgagor fails to insure or fails to pay the insurance premiums when due, Mortgagee may insure said buildings.

Mortgagor hereby covenants and agrees to pay before the same becomes delinquent, all taxes and assessments levied or assessed upon or against the above-described premises, including all personal taxes; and in the event of Mortgagor's failure to pay the same when due, the Mortgagee may make the payments.

Mortgagor agrees not to commit or permit waste upon the mortgaged properties and shall maintain the properties in as good condition as at present, reasonable wear and tear excepted.

Failure to pay, when due, any sum herein covenanted to be paid or secured hereby or the failure to comply with any of the terms and conditions hereof shall constitute a default and shall cause the whole debt to become immediately due and collectible at the option of the Mortgagee, without notice, including all monies paid by the said Mortgagee for taxes, assessments, insurance premiums, and any sum paid in protection of the lien of this mortgage shall bear interest from the date of such payment at the maximum rate of interest allowed by law.

Mortgagee's failure to enforce its rights upon breach of default of any of the terms hereof shall not thereby waive his rights in case of any subsequent breach of default.

In the event this Mortgage is foreclosed by Mortgagee, as provided by law, Mortgagor agrees to pay a reasonable attorney's fee, the same to be a lien upon the said premises due and payable when suit is begun. The plaintiff in such suit of foreclosure shall be entitled, without notice, to the appointment of a receiver, to collect and receive the rents, issues and profits of the mortgaged premises, and exercise such other power as the Court shall confer. It is agreed that should this mortgage be foreclosed the property described in the decree of foreclosure entered in such action may be ordered sold as mesne, or as lots or parcels at the option of the Mortgagee.

Should the property herein mortgaged be sold, transferred or assigned by Mortgagor, the entire unpaid sum then due hereon or secured hereby shall become immediately due and payable.

This mortgage and the note secured hereby shall be governed and construed according to the laws of the State of Idaho.

The word "mortgagor" and the language of this instrument shall, where there is more than one mortgagor, be construed as plural and be binding equally on all mortgagors; and the word "mortgagee" shall be construed as including any lawful holder hereof; and both the words "mortgagor" and "mortgagee" shall be construed as including the heirs, executors, administrators, personal representatives, successors and assigns of each as the case may be.

IN WITNESS WHEREOF, the Mortgagor has hereunto set his hand this 7th day of

JUNE, 2002 XX

THE LYNN G. BEUS TRUST

By: JOHN C. SOUZA, TRUSTEE

EXHIBIT

8

7711 00

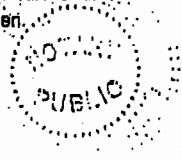
STATE OF IDAHO

COUNTY OF Caribou

ss.

On this 7th day of June, 2002, 19, before me, a Notary Public in and for said State of Idaho, personally appeared John C. Souza, known to me to be the trustee of the Lynn G. Beus Trust known or identified to me to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he executed the same, the same for and on behalf of said trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature]

Notary Public for Idaho,

Residing at: Lava Hot Springs, ID

My Commission expires 7/22/02

STATE OF IDAHO

COUNTY OF _____

ss.

On this _____ day of _____, 19____, before me, a Notary Public in and for said State of Idaho, personally appeared _____ known or identified to me to be the _____ of _____ the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho,

Residing at: _____

My Commission expires _____

STATE OF IDAHO } ss. 166205
County of Caribou }

I hereby certify that this instrument was filed at the request of Caribou Title at 4:35 o'clock p on this 13th day of June, 2002 in my office and duly recorded official Records.

Recorder Edie Izatt

Signature [Signature]

Deputy 600

INSTRUMENT No. _____

Real Estate Mortgage

STATE OF IDAHO, COUNTY OF _____

I hereby certify that this instrument was filed for record at the request of _____

at _____ minutes past _____ o'clock

m., this _____ day of _____

19____, in my office, and duly recorded in micro-film records, Instrument No. _____

Ex-Officio Recorder

By _____

Deputy

Fees \$ _____

Mail to: _____

Payments will be rounded up to the nearest dollar. The final payment I also agree to pay any additional fee owing and the amount of any advances you have made to others on my behalf. Payments are scheduled to be paid on the 28th, 30th or 31st day of a month. If any month contains no such day will, instead, be made on the last day of such month.

7. **PREPAYMENT.** I may not prepay this Loan in full. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

8. **LOAN PURPOSE.** The purpose of this Loan is 2002 OPERATING LINE OF CREDIT.

9. **SECURITY.** This Loan is secured by the following, previously executed, security instruments or agreements: SECURITY AGREEMENT DATED JUNE 7, 2002 COVERING LIVESTOCK, EQUIPMENT, CROPS AND FEED. REAL ESTATE MORTGAGE DATED JUNE 7, 2002 COVERING REAL ESTATE PROPERTY LOCATED 3128 WOOD CANYON RD. SODA SPRINGS, IDAHO 83278..

10. **DEFAULT.** I understand that you may demand payment anytime at your discretion. For example, you may demand payment in full if any of the following occur:

A. **Payments.** I fail to make a payment in full when due.

B. **Insolvency or Bankruptcy.** I make an assignment for the benefit of creditors or become insolvent, either because my liabilities exceed my assets or I am unable to pay my debts as they become due; or I petition for protection under federal, state or local bankruptcy, insolvency or debtor relief laws, or am the subject of a petition or action under such laws and fail to have the petition or action dismissed within a reasonable period of time not to exceed 90 days.

C. **Death or Incompetency.** I die or am declared legally incompetent.

D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Note.

E. **Other Documents.** A default occurs under the terms of any other transaction document.

F. **Other Agreements.** I am in default on any other debt or agreement I have with you.

G. **Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. **Judgment.** I fail to satisfy or appeal any judgment against me.

I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.

K. **Property Transfer.** I transfer all or a substantial part of my money or property.

L. **Property Value.** The value of the Property declines or is impaired.

M. **Ensalon.** Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained by federal law.

N. **Insecurity.** You reasonably believe that you are insecure.

11. **ASSUMPTIONS.** Someone buying the Property cannot assume the obligation. You may declare the entire balance of the Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, or transfer of the Property.

12. **WAIVERS AND CONSENT.** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. **Additional Waivers By Borrower.** In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note.

(4) You, or any institution participating in this Note, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guaranteeing or relating to this Note.

B. **No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or other Loan documents, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

13. **REMEDIES.** After default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following.

A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Note immediately due.

B. **Sources.** You may use any and all remedies you have under state or federal law or in any instrument securing this Note.

C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.

D. **Payments Made On My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.

E. **Termination.** You may terminate my right to obtain advances and may refuse to make any further extensions of credit.

F. **Attachment.** You may attach or garnish my wages or earnings.

G. **Set-Off.** You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

H. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give-up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

14. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. To the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees you incur to collect this Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

15. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a party.

16. **APPLICABLE LAW.** This Note is governed by the laws of Idaho, the United States of America and to the extent required, by the laws of the jurisdiction where the Property is located. In the event of a dispute, the exclusive forum, venue and place of jurisdiction will be in Idaho, unless otherwise required by law.

17. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** My obligation to pay this Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on this Loan, or any number of us together, to collect this Loan. Extending this Loan or new obligations under this Loan, will not affect my duty under this Loan and I will still be obligated to pay this Loan. The duties and benefits of this Loan will bind and benefit the successors and assigns of you and me.

18. **AMENDMENT. INTEGRATION AND SEVERABILITY.** This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note is the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

19. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

20. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one party will be deemed to be notice to all parties. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

21. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

22. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.


23. SIGNATURES. By signing, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

BORROWER:


JERRY BEUS

LENDER:

Ireland Bank


Tom McBride, AVP/Loan Officer

(Artist)

JERRY BEUS 3125 WOOD CANYON RD, P.O. BOX 712 SODA SPRINGS, ID 83276	IRELAND BANK 110 HIGHWAY 30 EAST PO BOX 277 INKDM, ID 83245	SSN/TIN # XXXXXXXXXX Loan Number <u>5020001377</u> Date <u>12-18-2002</u> Maturity Date <u>12-20-2003</u> Loan Amount \$ <u>235,000.00</u> Renewal Of _____ PHONE # <u>208-547-3081</u>
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of **TWO HUNDRED THIRTY FIVE THOUSAND AND NO/100** Dollars \$235,000.00

- ☐ Single Advance: I will receive all of this principal sum on _____. No additional advances are contemplated under this note.
- ☒ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On 12-20-2002 I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are UPON BORROWER'S REQUEST AND A \$1000.00 MINIMUM

- ☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____.
- ☒ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).
- INTEREST: I agree to pay interest on the outstanding principal balance from 12-20-2002 at the rate of 7.250 % per year until 12-21-2002

- ☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 1.000 PERCENT ABOVE the following index rate: THE HIGHEST RATE ON CORPORATE LOANS POSTED BY AT LEAST 75% OF THE USA'S THIRTY LARGEST BANKS KNOWN AS THE WALL STREET JOURNAL PRIME RATE. THE RESULT OF THIS CALCULATION WILL BE ROUNDED TO THE NEAREST 0.125

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 12-21-2002

A change in the interest rate will take effect ON THE SAME DAY

☐ Limitation: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

- ☐ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a ACTUAL/365 basis.

POST MATURITY DATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is made more than 15 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MINIMUM OF \$50.00

☒ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☒ are ☐ are not included in the principal amount above: FINANCING FEE \$17.00 ORIGINATION FEE \$1250.00

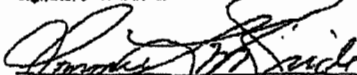
PAYMENTS: I agree to pay this note as follows:

INTEREST ON THE AMOUNT OF CREDIT OUTSTANDING DUE AT MATURITY AND PRINCIPAL DUE ON 12-20-2003.

ADDITIONAL TERMS: THIS NOTE IS SECURED BY SECURITY AGREEMENT DATED JUNE 7, 2002 COVERING EQUIPMENT, LIVESTOCK, FEED, CROPS AND GOVERNMENT PAYMENTS. FIRST MORTGAGE DATED JUNE 7, 2002 COVERING PROPERTY AT TOWNSHIP 8 SOUTH, RANGE 42 EBM, SECTION 28, 29, 34 & 35, TOWNSHIP 8 SOUTH, RANGE 42 EBM, SECTION 2, 3, 10 & 11.

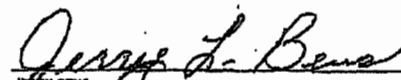
☒ SECURITY: This note is separately secured by (describe separate document(s) type and date):
SECURITY AGREEMENT DATED 6/7/02, RE MORTGAGE DATED 6/7/02 AND SECURITY AGREEMENT 7/11/2002
 (This section is for your internal use. Failure to list a separate security document does not mean the agreement is not secured by this note.)

Signature for Lender


TOM MCBRIFFE, LEND OFFICER

PURPOSE: The purpose of this loan is 2002 OPERATING LINE OF CREDIT

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.


JERRY BEUS

REAL ESTATE MORTGAGE

166206

THIS MORTGAGE, made by THE LYNN G. BEUS TRUST
of the County of CARIBOU, State of IDAHO, as Mortgagor, and IRELAND BANK, a corporation,
at its office in SODA SPRINGS,

WITNESSETH:

That the said Mortgagor hereby grants, bargains, sells, and conveys unto the said Mortgagee, its successors and assigns
forever, the following described real property, situated in CARIBOU County, State of Idaho, to-wit:

TOWNSHIP 8 SOUTH, RANGE 42 EAST OF THE BOISE MERIDIAN:

SECTION 25: S $\frac{1}{2}$ SW $\frac{1}{2}$.
SECTION 26: S $\frac{1}{2}$ SE $\frac{1}{2}$, SW $\frac{1}{2}$ SW $\frac{1}{2}$,
SECTION 34: E $\frac{1}{2}$ NE $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{2}$, SE $\frac{1}{2}$.
SECTION 35: N $\frac{1}{2}$, SW $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{2}$.

TOWNSHIP 9 SOUTH, RANGE 42 EAST OF THE BOISE MERIDIAN:

SECTION 2: LOTS 2, 3, 4, 5, 6 and 7, SW $\frac{1}{2}$ NE $\frac{1}{2}$, S $\frac{1}{2}$ NW $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{2}$, NW $\frac{1}{2}$: SE $\frac{1}{2}$.
SECTION 3: LOTS 1, 2 and 3, S $\frac{1}{2}$ NE $\frac{1}{2}$, SE $\frac{1}{2}$ NW $\frac{1}{2}$, S $\frac{1}{2}$.
SECTION 10: N $\frac{1}{2}$ N $\frac{1}{2}$, SE $\frac{1}{2}$ NE $\frac{1}{2}$.
SECTION 11: LOTS 2 and 3, S $\frac{1}{2}$ NW $\frac{1}{2}$, W $\frac{1}{2}$ SW $\frac{1}{2}$.

TOGETHER WITH all water, water rights, ditch, ditch rights, improvements, privileges and appurtenances thereunto belonging and the rents,
issues and profits thereof.

Said Mortgagor hereby warrants the title to said land and appurtenances against all persons whomsoever and agrees to defend the same.

This grant is intended as a mortgage:

(1) To secure the payment of the principal sum of TWO HUNDRED THIRTY FIVE THOUSAND AND 00/100 + + +

DOLLARS (\$235,000.00) lawful money of the United States of America, evidenced and according to the terms of a Promissory note executed and
delivered on the 7th day of JUNE, 20 02, by Mortgagor as maker, to the Mortgagee herein as payee, with both principal and interest
being payable at the Mortgagee's office above referenced, with the final payment, if not sooner paid, to be due and payable on the 1st day of
DECEMBER, 20 02.

(2) To secure the payment of any and all further sums as may be hereafter loaned or advanced Mortgagor by Mortgagee during the existence of this
Mortgage, whether represented by notes, open accounts, drafts, or otherwise, it being the express intention of the parties that this mortgage shall stand as
continuing security for all such loans, together with interest thereon and all costs, disbursements and attorney fees that become payable by Mortgagor here under.

Mortgagor covenants and agrees to keep the buildings located upon the premises insured, in a company satisfactory to Mortgagee, for at least
\$ _____, with loss payable to Mortgagee, and further that each policy or renewal thereof shall be delivered to said Mortgagee. In the
event Mortgagor fails to insure or fails to pay the insurance premiums when due, Mortgagee may insure said buildings.

Mortgagor hereby covenants and agrees to pay before the same becomes delinquent, all taxes and assessments levied or assessed upon or against
the above-described premises, including all personal taxes; and in the event of Mortgagor's failure to pay the same when due, the Mortgagee may make the
payments.

Mortgagor agrees not to commit or permit waste upon the mortgaged properties and shall maintain the properties in as good condition as at present,
reasonable wear and tear excepted.

Failure to pay, when due, any sum herein covenanted to be paid or secured hereby or the failure to comply with any of the terms and conditions hereof
shall constitute a default and shall cause the whole debt to become immediately due and collectable at the option of the Mortgagee, without notice, including all
monies paid by the said Mortgagee for taxes, assessments, insurance premiums, and any sum paid in protection of the lien of this mortgage shall bear interest
from the date of such payment at the maximum rate of interest allowed by law.

Mortgagee's failure to enforce its rights upon breach of default of any of the terms hereof shall not thereby waive his rights in case of any subsequent
breach of default.

In the event this Mortgage is foreclosed by Mortgagee, as provided by law, Mortgagor agrees to pay a reasonable attorney's fee, the same to be a lien
upon the said premises due and payable when suit is begun. The plaintiff in such suit of foreclosure shall be entitled, without notice, to the appointment of a receiver,
to collect and receive the rents, issues and profits of the mortgaged premises, and exercise such other power as the Court shall confer. It is agreed that should
this mortgage be foreclosed the property described in the decree of foreclosure entered in such action may be ordered sold on massa, or as lots or parcels at
the option of the Mortgagee.

Should the property herein mortgaged be sold, transferred or assigned by Mortgagor, the entire unpaid sum then due hereon or secured hereby shall
become immediately due and payable.

This mortgage and the note secured hereby shall be governed and construed according to the laws of the State of Idaho.

The word "mortgagor" and the language of this instrument shall, where there is more than one mortgagor, be construed as plural and be binding equally
on all mortgagors; and the word "mortgagee" shall be construed as including any lawful holder hereof; and both the words "mortgagor" and "mortgagee" shall be
construed as including the heirs, executors, administrators, personal representatives, successors and assigns of each as the case may be.

IN WITNESS WHEREOF, the Mortgagor he s hereunto set his hand s this 7th day of
JUNE, 20 02.

THE LYNN G. BEUS TRUST

JOHN C. SOUZA, TRUSTEE

EXHIBIT "J"

EXHIBIT

10

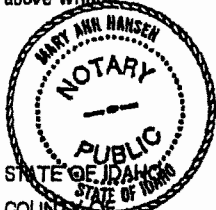
STATE OF IDAHO

COUNTY OF Bannock

ss.

On this 7th day of June, 2002, before me, a Notary Public in and for said State of Idaho, personally appeared John C. Douha, known to me to be the trustee of the Lynn G. Beus Trust known or identified to me to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Mary Ann Hansen

Notary Public for Idaho,

Residing at: Pocahontas, Idaho

My Commission expires 01/29/07

STATE OF IDAHO
COUNTY OF Bannock

ss.

On this _____ day of _____, 20____, before me, a Notary Public in and for said State of Idaho, personally appeared _____ of _____ known or identified to me to be the _____ of _____ the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho,

Residing at: _____

My Commission expires _____

STATE OF IDAHO } ss.

166206

County of Caribou

I hereby certify that this instrument was filed at the request of Chadwick Title

at 4:35 o'clock P m this 13th day of June, 2002 in my office and duly

recorded official Records

Recorder Edie Izatt

Signature Denise Horsley

Deputy 600

INSTRUMENT No. _____
Real Estate Mortgage

STATE OF IDAHO, COUNTY OF _____

I hereby certify that this instrument was filed for record at the request of _____

at _____ minutes past _____ o'clock _____ m., this _____ day of _____

20____, in my office, and duly recorded in micro-film records, instrument No. _____

Ex-Officio Recorder

By _____

Deputy

Fees \$ _____

Mail to: _____

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, **THE LYNN G. BEUS TRUST, JOHN C. SOUZA TRUSTEE**, (hereinafter "Maker") promise to pay the sum of **FOUR HUNDRED TWENTY SEVEN THOUSAND FIVE HUNDRED AND NO/HUNDREDTHS DOLLARS (\$427,500.00)** in lawful money of the United States, and as hereinafter provided, to the order of **DBL COMPANY, INC.**, an Idaho corporation (hereinafter "Lender") located at 4444 Hillcrest Dr., Boise, Idaho 83705.

1. **Payment schedule and terms.** The principal sum above-stated shall bear interest and shall be paid as follows:

(a) **Interest and Rate.** Such principal sum, or so much thereof as is from time to time unpaid, shall bear interest at the rate of **Fourteen per cent (14.0%) per annum** (the "Interest Rate") from the date of this note until paid.

(a-1) **Interest on Accrued Interest and Interest on Late Payment Penalty.** Anything to the contrary herein contained notwithstanding, if any sum of interest or late payment penalty is not paid when due, then such sums shall be added to the principal balance.

(b) **Payments.** Interest for the first year shall be a payment of \$52,500.00 made at closing. After the first year payments shall be made in monthly payments of \$4,987.50 with the first such payment due on the 1st day of June, 2008, and continuing to be paid in a like manner on the 1st day of each subsequent month, until the 1st day of May, 2013, at which date the remaining principal balance and all accrued interest shall be due and payable in full.

(b-1) **Full Reconveyance** - At such time this loan is paid in full, Lender agrees to make, execute and deliver to Caribou Land Title, Inc. a satisfaction of mortgage for the Property securing this Note.

(c) **Late fee** - There shall be imposed on each payment received by the escrow holder more than 10 days after the due date thereof a late fee of **Ten percent (10%)** on the amount so overdue, for the purpose of defraying the administrative expense incident to handling such delinquent payments. Maker acknowledges that the exact amount of such administrative expense of holder would be difficult to calculate and that such late charge represents a reasonable estimate of a fair average compensation for the loss that may be sustained by the holder due to the failure of the undersigned to make timely payments. Such late charge shall be paid without prejudice to the right of the holder to collect any other amounts provided to be paid or to declare a default hereunder.

EXHIBIT

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EXHIBIT

K

(d) **Place of Payment.** Maker shall pay all sums due hereunder at:
Caribou Land Title, Inc., P.O. Box 608, 241 South Main Street, Soda Springs, Idaho 83276 or at such other place as the lawful holder hereof may hereafter direct in writing.

(e) **Application of Payments.** All payments shall be applied first to escrow fees, then late charges, if any, then interest accrued and, thereafter, to the principal then unpaid.

(f) **Pre-payment - Penalty - Payments Unchanged.** Except for the principal component of each monthly payment, a prepayment penalty of Three percent (3%) will apply to any principal sums paid and applied to principal note balance reduction or should said loan be paid off, any time during the first year. Any prepayment of principal at any time shall not reduce or otherwise affect the regularly-scheduled payments hereunder.

2. **Security.** This Note is secured by a Mortgage of even date herewith encumbering certain real property (the "Property") located in Caribou County, State of Idaho, as more particularly described therein.

3. **Due-on Sale-Assumption.** All sums due and owing pursuant to this Promissory Note and the Mortgage securing same shall become automatically due and payable and fully accelerated if Makers voluntarily or involuntarily transfer, assign, hypothecate, further encumber or otherwise make a transfer of any interest whatsoever in the real property encumbered by this Promissory Note. In the event of such a transfer or further encumbrance, the holder of this Note shall have the right to foreclose against the described real property and to enforce all rights allowed by it under Idaho law.

4. **Default.** Any default under this Note or in the due, prompt and complete performance or observance of any covenant, agreement or obligation of the undersigned contained in any mortgage, deed of trust, commitment letter, security agreement, or other agreement given as security for this Note or pertaining hereto, after giving effect to the curative periods herein or therein provided, shall, at the option of the Lender, be deemed a default on all Notes, obligations and liabilities of each and all of the parties liable hereon to the Lender hereof, whether now existing or hereafter arising; and, any default under any other Note, obligation or liability of any party liable hereon to the Lender hereof, whether now existing or hereafter arising, after giving effect to any curative periods herein or therein provided, shall, at the option of the Lender hereof, be deemed a default on this Note.

5. **Acceleration With Out Notice.** If any default occurs in payment of any sum due under this Note, or a default occurs under any loan document, the lawful holder thereof may, after 10 days written notice, declare the full amount of the principal and interest remaining unpaid as immediately due and payable.

6. Default Interest. If any default occurs under this Note or the loan documents, the entire unpaid principal balance hereof shall, for all purposes, thereafter earn interest at the rate which shall be five percent (5%) above the interest rate (the "Default Rate") from the date of such default until the default shall have been cured to the satisfaction of Lender in its sole discretion. Upon the cure of any default under this Note or the loan documents in a manner acceptable to the Lender in its sole discretion, unless the Note or the loan documents shall otherwise be in default, the unpaid principal balance shall thereafter bear interest at the original Interest Rate from the date of such cure, all as determined by the Lender. Failure of Lender to assess interest at the Default Rate on one or more occasions shall not constitute a waiver of the right to do so in the event of any subsequent defaults.

7. Reduction of Principal Balance on Cure of Default. In addition to payment of late fees and default interest upon default hereunder, Maker agrees to make a payment to reduce the principal balance on this Note. The amount of this payment shall be equal to the amount needed to reduce the principal charges, regular interest, default interest and collection costs to the amount they each should be under the amortization schedule for this Note, had no default occurred.

8. Collection Costs. Each undersigned Maker and each endorser and each guarantor, if any, shall pay to the lawful holder hereof all costs incurred to collect any sums due under this Note, including but not limited to, reasonable attorney's fees incurred before and after legal action is commenced, and before and after judgment is entered. Until all such collection costs and attorney's fees are paid in full, they shall accrue interest at the default rate.

9. Waivers. Each undersigned Maker and each endorser and each guarantor of this Note jointly and severally waive(s) demand for payment, presentment for payment, notice of non-payment, notice of dishonor, and protest, and agree that the time for payment hereof may be extended without any further consent and without impairing their liability hereunder. Failure of the lawful holder hereof to enforce any of the provisions hereof upon a default in performance shall not constitute a waiver of the provision itself or any subsequent default in performance thereof.

10. Interpretation. The paragraph headings used herein are for convenience only, and are not a part of this Note, and are not to be used in construing it. Singular terms used herein shall be read as if written in the plural when the context so requires or permits. The liability of all those signing this Note as maker or as endorser or as guarantor, or in any other capacity, shall be joint and several as to each and every provision of this Note.

DATED this 2nd day of May, 2007


JOHN C. SOUZA

A. <p style="text-align: center;">SETTLEMENT STATEMENT U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT</p>		B. TYPE OF LOAN 1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FNMA 3. <input type="checkbox"/> CONV. LOANS. 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> CONV. INS. 6. FILE NUMBER: 07-17383 7. LOAN NUMBER: 8. MORTGAGE INSURANCE CASE NUMBER:	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in totals.			
D. NAME & ADDRESS OF BORROWER THE LYNN BEUS TRUST c/o John Souza, Trustee 239 NE 8th Ave. Pocatello, ID 83201 PH:		E. NAME & ADDRESS OF SELLER PH: TIN # :	
G. PROPERTY LOCATION 8-42 Section 25, 26, 34 and 35 9-41 Section 2, 3, 10, 11		H. SETTLEMENT AGENT Caribou Title I. SETTLEMENT DATE 03 May 2007 DISBURSEMENT DATE 03 May, 2007	
J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101.		401.	
102.		402.	
103. SETTLEMENT CHARGES TO BORROWER (L 1400)		403.	
104. Ireland Bank		404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City taxes		406. City taxes	
107. City taxes		407. City taxes	
108. Assents		408. Assents	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER		420. GROSS AMOUNT DUE TO SELLER	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTION IN AMOUNT DUE TO SELLER:	
201.		501.	
202. New Loan/DBL Company		502. Settlement charges to seller (L 1400)	
203.		503.	
204.		504.	
205.		505.	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City taxes		510. City taxes	
211. City taxes		511. City taxes	
212. Assents		512. Assents	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER		520. TOTAL REDUCTION AMOUNT DUE SELLER	
300. CASH AT SETTLEMENT FROM/TO BORROWER		600. CASH AT SETTLEMENT TO/FROM SELLER	
301. Gross amount due from borrower (L 120)		601. Gross amount due to seller (L 420)	
302. Less amounts paid by/for borrower (L 220)		602. Less reductions due seller (L 520)	
303. CASH (FROM) (TO) BORROWER		603. CASH (TO) (FROM) SELLER	

 HUD-1 (Rev. 3-86)
 RESPA HB 4305.2

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see Title 18: US Code Section 1001 and Section 1010.

EXHIBIT

tabbles

-331

EXHIBIT 51/ 28

L. SETTLEMENT CHARGES.				GF: 07-17383
700. TOTAL SALES/BROKER'S COMMISSION based on \$				@ .00 % =
Division of commission as follows:				
701.	\$.00	to	
702.	\$.00	to	
703.				
704.				
800. ITEMS PAYABLE IN CONNECTION WITH LOAN				
801.	Loan Origination	5.0000%	Signature Financial Serv	21,375.00
802.		.0000%		
803.	Prepaid Interest	DBL Company, Inc. (1 yr int)		52,500.00
804.	Processing Fee	Mortgage Loan Processors, LLC		162.50
805.				
806.				
807.				
808.				
809.				
810.				
811.				
812.				
813.				
814.				
900. ITEMS REQUIRED BY THE LENDER TO BE PAID IN ADVANCE				
901.	Interest from	thru	\$ \$	/day
902.				
903.				
904.				
905.				
906.				
1000. RESERVES DEPOSITED WITH LENDER				
1001.		no. \$	/ no.	
1002.		no. \$	/ no.	
1003.		no. \$	/ no.	
1004.		no. \$	/ no.	
1005.		no. \$	/ no.	
1006.		no. \$	/ no.	
1007.		no. \$	/ no.	
1008.	Aggregate Accounting Adjustment			.00
1100. TITLE CHARGES				
1101.	Closing Fee	Caribou Land Title, Inc.,		500.00
1102.	Long Term Escrow	Caribou Land Title, Inc.,		250.00
1103.				
1104.				
1105.				
1106.				
1107.	Attorney's Fee	Fred L. Remy, Attorney		750.00
(includes above item numbers: Attorney's Fee/Mortgage)				
1108.	Title Insurance	Caribou Land Title, Inc		1,493.00
(includes above item numbers)				
1109.	Mortgagee's Policy	\$ 427,500.00		
1110.		\$.00		
1111.	Increasing Wire Fee			25.00
1112.	State Lien Search			25.00
1113.	2 Express Fees			60.00
1114.				
1115.				
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201.	Recording fees: Deed \$	28.00 ; Mtg \$	30.00 ;	\$.00
1202.	Release Fees	\$ 6.00	\$.00	6.00
1203.		\$.00	\$.00	
1204.				
1205.				
1300. ADDITIONAL SETTLEMENT CHARGES				
1301.				
1302.				
1303.				
1304.				
1305.				
1306.				
1307.				
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Sec J and 502, Sec K)				77,204.50

SUBSTITUTE FORM 1099 SELLER STATEMENT--The information contained in Blocks E, G, H, and I and on line 401 is important tax information and is being furnished to the Internal Revenue Service in lieu of form 1099-S.

CERTIFICATION

GF:07-17383

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I fully certify that I have received a copy of HUD-1 Settlement Statement.

Borrowers:

THE LYNN G BEUS TRUST

By: 

JOHN SOUZA, Trustee

Sellers:

The HUD-1 Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.


Caribou Title

Settlement agent

5/4/07
Date

Instrument # 178119

CARIBOU COUNTY

2007-05-04

11:35:58 No. of Pages: 10

Recorded for: CARIBOU TITLE

VEDA MASCARENAS

Ex-Officio Recorder Deputy

Index to: MORTGAGE

Fee: 30.00

MORTGAGE

THIS MORTGAGE, made this 2nd day of May, 2007,
between the Lynn G. Beus Trust, of Soda Springs, Caribou County, Idaho, whose mailing
address is 239 NE 8th Avenue, Pocatello, Idaho 83201, hereinafter referred to as the
"Mortgagor," and DBL Company, Inc., an Idaho corporation, whose address is 4444
Hillcrest Drive, Boise, Idaho 83705, hereinafter referred to as the "Mortgagee;"

WITNESSETH:

The Mortgagor does hereby irrevocably mortgage to the Mortgagee, its successors
and assigns, all of that property in the County of Caribou, State of Idaho, as described on
EXHIBIT "A," attached hereto and incorporated herein by reference, hereinafter referred
to as the "Mortgaged Property," or the "Real Property," or the "Property."

Together with all rents, issues, profits, royalties, income and other benefits
derived from the property, subject, however, to the right, power and authority hereinafter
given to and conferred upon the Mortgagor to collect and apply such rents, issues and
profits;

Together with all easements, rights of way and rights used in connection with the
property or as a means of access thereto, and all tenements, hereditaments and
appurtenances thereof and thereto, and all water rights and shares of stock evidencing the
same;

Together with any and all buildings and improvements now or hereafter erected
on the property, including but not limited to, the fixtures, attachments, appliances and
other articles attached to or affixed to said buildings (hereinafter referred to as the
"Improvements");

Together with any and all claims or demands with respect to the proceeds of
insurance and any and all awards made for the taking by eminent domain, or by any
proceeding or purchase in lieu thereof.

The entire estate, property and interest is hereby referred to as the "Mortgaged
Property."

THIS MORTGAGE IS FOR THE PURPOSE OF SECURING THE
FOLLOWING:

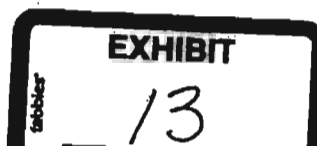


EXHIBIT "M"

(a) Payment of the sum of \$427,500.00 with interest thereon according to the terms of a Promissory Note of even date herewith (hereinafter referred to as the "Secured Note" or the "Promissory Note") made by the Mortgagor, payable to the order of the Mortgagee, with final payment due May 1, 2013.

(b) Payment of all sums advanced by Mortgagee to protect the Mortgaged Property, with interest thereon at the interest rate specified in the Promissory Note; and

(c) Performance of all obligations of Mortgagor contained in this Mortgage; and

(d) Payment of all other sums, with interest thereon according to the tenor of any document or instrument evidencing the same, which may hereafter be loaned or advanced by Mortgagee to Mortgagor.

This Mortgage, the Promissory Note, and any other documents or instruments given to evidence or further secure the payment and performance of any obligation secured hereby may hereinafter be referred to as the "Loan Documents".

I

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

1.1 Mortgagor shall pay when due the Promissory Note and any other indebtedness evidenced by the Promissory Note, together with all interest thereon, and all charges, fees and other sums provided therein and any future advances secured by this Mortgage.

1.2 Mortgagor shall: (a) keep the Mortgaged Property in good condition and repair; (b) not remove or demolish any building or improvements thereon; (c) complete or restore promptly and in good condition and workmanlike manner any building which may be constructed, damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefore; (d) comply with all laws affecting the Mortgaged Property or requiring any alterations or improvements to be made thereon; (e) not commit or permit waste thereof; (f) not commit, suffer or permit any act upon the Mortgaged Property in violation of law; (g) to maintain, repair and do all other acts which from the character or use of the Mortgaged Property may be reasonably necessary.

1.3 Mortgagor shall provide, maintain and deliver to Mortgagee public liability and standard replacement cost casualty insurance satisfactory to and with loss payable to Mortgagee. The amount collected under any insurance policy may be applied by Mortgagee upon any indebtedness secured hereby and in such order as Mortgagee may determine, or at the option of the Mortgagee, the entire amount so collected or any part thereof may be released to Mortgagor. Such application or release shall not cure or waive

any default or notice of default hereunder or invalidate any act done pursuant to such notice.

1.4 Mortgagor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee and shall pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Mortgagee may appear.

1.5 Mortgagor shall pay, at least ten (10) days before delinquency, all taxes and assessments affecting the Mortgaged Property, when due, and all loans, encumbrances, charges and liens, with interest, on the Mortgaged Property or any part thereof, which appear to be prior or superior hereto; and all costs, fees and expenses in connection therewith. Mortgagor's failure to satisfy or otherwise fully and faithfully perform any such obligations when due shall constitute a default under this Mortgage.

1.6 Mortgagor shall pay immediately and without demand all sums expended by Mortgagee pursuant to the provisions hereof, with interest from the date of expenditure at the legal interest rate.

1.7 Should Mortgagor fail to make any payment or do any act as herein provided, then Mortgagee, but without obligation so to do and without notice to or demand upon Mortgagor, and without releasing Mortgagor from any obligation hereof, may make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon said property for such purposes and to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee and to pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Mortgagee appears to be prior or superior hereto; and, in exercising any such powers, or enforcing this Mortgage by judicial foreclosure, pay any necessary expenses, employ counsel and pay reasonable attorney's fees.

1.8 Mortgagor shall bear responsibility for compliance with all Environmental Laws for activities and operations on the property from and after the date of this Mortgage. Mortgagor shall indemnify, defend, protect and hold harmless Mortgagee from any and all liability, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on appeal), judgments, proceedings, administrative enforcements and other administrative actions, and causes of action arising out of the presence upon the premises of any Hazardous Substances, which are released or discharged on the property from Mortgagor's activities or operations upon the property after the date of this Mortgage.

As used herein, the term "Hazardous Substances" is defined as any chemical, compound or material which is deemed a hazardous substance, hazardous waste, hazardous material, infectious waste or toxic substance, crude oil, waste oil and any fractions thereof under any federal Environmental Law or regulation; "hazardous waste," "restricted hazardous wastes," and "waste" with any of the above properties as defined in

Idaho Code § 39-4403(8), (14), and (17), respectively; and any other chemical material or substance that, because of its quantity, concentration, physical or chemical characteristics, exposure to which is limited or regulated for health, safety, and environmental reasons by any governmental agency with jurisdiction or which poses significant present or potential hazard to human health, safety or to the environment if released to the workplace or the environment. The terms "release" and "discharge" shall be broadly construed to mean any spill, escape from confinement, and migration of a Hazardous Substance whether intentional or not. The term "Environmental Law" shall refer to all federal laws designed to protect human health and the environment, including, but not limited to: Clean Air Act; Clean Water Act; Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA); the Emergency Planning and Community Right to Know Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Solid Waste Disposal Act/Resource Conservation Recovery Act; the Safe Drinking Water Act; the Toxic Substances Control Act; and any and all acts regulating nuclear materials, together with all rules and regulations promulgated thereunder and all amendments thereto, and shall also refer to the Idaho Environmental Protection and Health Act, the Idaho Hazardous Waste Management Act, and any state or local law, rule or regulation which covers the same subject matter as these federal laws.

1.9 The individual executing this Mortgage as the Trustee of the Lynn G. Beus Trust warrants and represents that: (1) he is the duly acting and qualified Trustee of said Trust, and (2) the execution, delivery and consummation of this Mortgage will not cause said Trust nor the Trustee to be in violation or breach of any law, regulation, contract, agreement or other restriction to or by which the Trust or the Trustee is subject or bound.

II

THE MORTGAGOR AND MORTGAGEE HEREBY MUTUALLY AGREE AS FOLLOWS:

2.1 Any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned to and shall be paid to Mortgagee who may apply or release such monies received by it in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance, or as otherwise provided in the Note.

2.2 By accepting payment of any sum secured hereby after its due date, Mortgagee does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

2.3 Upon payment in full by the Mortgagor of all sums secured hereby the Mortgagee shall release, without warranty, the Mortgaged Property, and shall provide to the Mortgagor a good and sufficient release and satisfaction of mortgage in a form suitable for recording. The recitals in such release and satisfaction of any matters or facts shall be conclusive proof of the truthfulness thereof.

2.4. As additional security, Mortgagor hereby gives and confers upon Mortgagee the right, power and authority during the continuance of this Mortgage to collect the rents, issues and profits of said property, reserving unto Mortgagor the right, prior to any default by Mortgagor and payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Mortgagee may at any time without notice, either in person, by agent, or by a receiver to be appointed by a Court of competent jurisdiction, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own names sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure nor waive any default or notice of default hereunder nor invalidate any act done pursuant to such notice.

III

REMEDIES UPON DEFAULT:

3.1 Upon default by Mortgagor with respect to payment of any indebtedness secured hereby, or in performance of any agreement hereunder, or any agreement under the Promissory Note, or in any indebtedness secured by the Property with a lien either superior or subordinate hereto, all sums secured hereby shall immediately become due and payable at the option of the Mortgagee.

3.2 If any event of default shall have occurred and be continuing, the Mortgagee shall have, in addition to any rights at law or in equity, each and all of the following rights and remedies, which may be exercised individually, collectively or cumulatively:

(a) Mortgagee may, at its option, by written notice to Mortgagor, declare immediately due and payable the entire debt secured by this Mortgage, and upon any such declaration, the additional amount added to the debt by the Promissory Note, accrued and unpaid interest and premium (if any), shall become and be immediately due and payable, anything to the contrary contained in this Mortgage or the Promissory Note notwithstanding, and the principal debt and interest to that date shall bear interest at the highest lawful contract rate.

(b) Mortgagee may, without regard to the adequacy of any security for the indebtedness or obligation hereby secured, in person or by agent or employee, or by a receiver appointed by a court of competent jurisdiction, enter upon and take possession of all or any part of the Mortgaged Property, and Mortgagor shall on demand peaceably surrender possession thereof to Mortgagee. The Mortgagee, in its own name or in the

name of the Mortgagor, may operate and maintain all or any part of the Mortgaged Property to such extent as the Mortgagee deems advisable, and may rent and lease the same to such persons, for such periods of time, and on such terms and conditions as the Mortgagee in its sole discretion may determine, and may sue for or otherwise collect any and all of the rents, issues and profits thereof, including those past due and unpaid. In dealing with the Mortgaged Property as Mortgagee in possession, Mortgagee shall be without any liability, charge or obligation therefore to the Mortgagor other than for willful misconduct and shall be entitled to operate any business then being conducted or which could be conducted thereon or therewith at the expense of and for the account of the Mortgagor (and all net losses, costs and expenses thereby incurred shall be advancements secured hereby), to the same extent as the owner thereof could do, and to apply the rents, issues and profits first to the payment of receiver's expenses, if any, for management of the Mortgaged Property, then to the payment of all taxes and lien assessments levied against the mortgaged property, where provision for payment of such is not otherwise made, then to the payment of any amounts due and owing to the Mortgagee under the terms of any obligation secured hereby, and then to the payment of current operating costs and expenses, including repairs, maintenance and necessary acquisitions of property and expenditures for capital improvements, arising in connection with the mortgaged property.

(c) In the event of the non-compliance of any duty or duties required of the Mortgagor under the terms of this Mortgage, or the occurrence of any event which, in the judgment of the Mortgagee, impairs the value of the Mortgaged Property herein taken as security for the indebtedness, the Mortgagee reserves the right, at its own election, to advance sufficient funds to accomplish said performance or maintain such security. Said sums, on notice from Mortgagee, shall become immediately due and repayable to the Mortgagee. In default of said payment, the amount advanced will be added to the outstanding principal balance of the Promissory Note, and shall bear interest at the highest lawful contract rate.

(d) The holder of this Mortgage shall have the right to foreclose the same by reason of a breach of any of the within covenants and in addition thereto shall have the right to foreclose the same by reason of any default or breach which gives the holder of this Mortgage the right to accelerate payment of principal or to call due the principal sum.

3.3 At any time after institution of foreclosure proceedings, a receiver may, upon application of the Mortgagee, be appointed by any court of competent jurisdiction to take charge of all of the Mortgaged Property, and to carry on, protect, preserve, replace and repair the Mortgaged Property, and receive and collect all of the rents and issues or profits thereof and to apply the same first to the payment of receiver's expenses for management, operation, and protection of the Mortgaged Property, and then in the manner provided in Paragraph 3.2 (b) herein. Upon appointment of said receiver, Mortgagor will deliver up possession of all Mortgaged Property and the whole thereof to such receiver forthwith. The Mortgagor hereby consents to the appointment of the Mortgagee as receiver in such proceedings.

3.4 Neither the Mortgagor, its trustees, beneficiaries, heirs, executors, administrators or assigns, shall have or assert any right under any statute or rule of law pertaining to the marshaling of assets, the exemption of homestead, the administration of estates of decedents, or in any manner whatever, to defeat, reduce or affect the right of the owners of said debt, under the terms of the Mortgage, to a foreclosure of the Mortgaged Property for the collection of said debt (without any prior or different resort for collection), or the right of such owner, under the terms of this Mortgage, to the payment of such debt out of the proceeds of a foreclosure sale of the Mortgaged Property in preference to every other person and claimant whatever (only reasonable expenses as aforesaid being first deducted). Any Mortgagor that has signed this Mortgage as a surety or accommodation party or that has subjected its property to this Mortgage to secure the indebtedness of another hereby expressly waives any defense arising by reason of any disability or other defense of the Mortgagor or by reason of the cessation from any cause whatsoever of the liability of the Mortgagor.

3.5 Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or the then owner of the Mortgaged Property, or of any of the Mortgagor or then owner's other property, the Mortgagee shall be entitled to retain possession and control of all property now or hereafter subject to this Mortgage.

3.6 In addition to any remedies provided herein for default hereof, Mortgagee shall have the remedies allowed under the laws of the State of Idaho and the laws of the United States. No failure on the part of the Mortgagee to exercise any of its rights hereunder arising upon default shall be construed to prejudice its rights in the event of any other or subsequent default. No delay on the part of the Mortgagee in exercising any of such rights shall be construed to preclude it from the exercise thereof at any time during the continuance of such default. Mortgagee may enforce any one or more remedies or rights hereunder successively or concurrently at its option. By accepting payment of any sum secured hereby after its due date, Mortgagee shall not thereby waive the agreement herein contained that the time is of the essence, nor shall Mortgagee waive either its right to require prompt payment when due of all other sums secured or to consider failure so to pay a default hereunder.

3.7 The rights of the Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.

IV

MISCELLANEOUS PROVISIONS:

4.1 This Mortgage shall be governed by the law of the State of Idaho. In the event that any provision or clause of the Note conflicts with applicable laws, such conflicts shall not affect other provisions that can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable.

4.2 This Mortgage applies to, inures to the benefit of, and binds all parties hereto, its heirs, devisees, administrators, executors, successors and assigns. The term "Mortgagee", shall mean the holder and owner of the Promissory Note secured hereby; or, if the Promissory Note has been pledged, the pledgee thereof. In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

4.3 This Mortgage is to be recorded in the real estate records of Caribou County, Idaho.

4.4 The Mortgagor agrees to take such actions and to execute and record, all at the Mortgagor's cost, such further instruments and agreements as the Mortgagee may reasonably request in order to perfect and continue the security hereof or to consummate the transaction contemplated by this Mortgage and the Promissory Note.

4.5 All notices required or permitted to be given hereunder shall be in writing, and shall be effective three (3) business days after such are deposited in the United States Mail, certified or registered, postage prepaid, addressed as shown in the first paragraph of this Mortgage, or to such other address as a party may, from time to time, designate to the other party, in writing.

4.6 The prevailing party in any litigation affecting or concerning this Mortgage or the Promissory Note secured hereby shall be entitled to a reasonable attorney's fee, in addition to allowable costs.

IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage the day and year first above written.

The Lynn G. Beus Trust

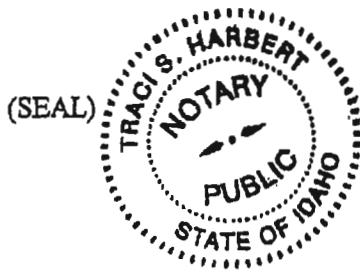
By: 

John C. Souza, Trustee

STATE OF IDAHO)
Bannock :SS
County of ~~Caribou~~)

On this 2 day of May, 2007, before me, the undersigned, a Notary Public in and for said County and State, personally appeared **John C. Souza**, known or identified to me to be the person whose name is subscribed to the within instrument as the Trustee of The Lynn G. Beus Trust, and acknowledged to me that he executed the same as such Trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.





Notary Public, Idaho
Residing at Bozelle
My Commission Expires: Dec. 11

EXHIBIT "A"

Caribou County, Idaho:

Township 8 South, Range 42 East of the Boise Meridian:

- Section 25: S½SW¼.
- Section 26: S½SE¼, SW½SW¼.
- Section 34: E½NE¼, E½SW¼, SE¼.
- Section 35: NW¼, SW¼, W½SE¼.

Township 9 South, Range 42 East of the Boise Meridian:

- Section 2: Lots 2, 3, 4, 5, 6 and 7, SW½NE¼, S½NW¼, N½SW¼, NW½SE¼.
- Section 3: Lots 1, 2 and 3, S½NE¼, SE½NW¼, S½.
- Section 10: N½NE¼, SE½NE¼.
- Section 11: Lots 2 and 3, S½NW¼, W½SW¼.

ARIBOU LAND TITLE, INC.

ESCROW HISTORY REPORT

4/14/09 PAGE 1

ESCROW#	INT#	PRINC-BAL	YTD-PRINC	YTD-INT	DLQ-INT	YTD-FEE	BUYER	SELLER
1823.1	14.000	438276.27	1570.44	11895.82	.00	15.00	LAWN & BEUS TRUST	DBL COMPANY, INC.
						15.00	(YTD Buyer Fee)	.00 (YTD Seller Fee)
		.00	RESERVE-BAL		.00	YTD-TAXES	.00	YTD-INS
							1496.25	YTD-LTCHG

--YTD ACTIVITY--

PYMT#	REF#	PMT-DATE	FOR-DATE	TTL-PMT	PRN-PD	INT-PD	FEE	LTE-CHG	TAX-INS	BUY-OTH	SEL-OTH	PRIN-BAL
DISBURSEMENT:				CK-DATE	SEL#	PAYEE			CK#		CK-AMT	
PYMT	33001	2/25/09	1/01/09	4992.50	.00	4498.75	5.00	498.75	.00	.00	.00	438948.31
						6770.41	**IntShort added to Balance					
DISBURSEMENT				2/27/09	10	DBL COMPANY, INC.		25766			4987.50	
PYMT	44008	3/20/09	2/01/09	4992.51	616.39	3872.37	5.00	498.75	.00	.00	.00	438831.57
DISBURSEMENT				3/24/09	20	IDaho INDEPENDENT BANK		25823			4987.51	
PYMT	53002	4/10/09	3/01/09	4992.50	854.05	3834.70	5.00	498.75	.00	.00	.00	438376.27
DISBURSEMENT				4/14/09	20	IDaho INDEPENDENT BANK		25868			4987.50	
ACTIVITY TTL				14977.51	1570.44	11895.82	15.00	1496.25	.00	.00	.00	
						TTL Regular Disbursements:						14962.51

EXHIBIT

tabler

15

EXHIBIT 0

ASC

21 November 2008

APPRAISAL & FINANCIAL SERVICE

CERTIFIED REAL ESTATE APPRAISERS IN IDAHO & UTAH

1086N 1400W, PRESTON, IDAHO 83263

TELEPHONE (208) 852-3366

Mr. Mark Shaffer
Attorney at Law
PO Box 1391
Pocatello ID 83204

Re: The Lynn G. Beus Trust Property Located at 3121 Wood Canyon Road in
Soda Springs, Idaho

Dear Mr. Shaffer:

In accordance with your request, I am presenting you the following appraisal of The
Lynn G. Beus Trust Property which is located in Soda Springs, Idaho.

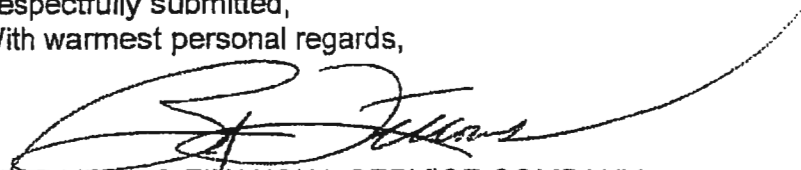
The appraisal for market value is based on a field examination, together with an
investigation and analysis of all pertinent data which is compiled within.

Subject to the assumptions and limiting conditions attached to this appraisal, the market
value on the 10th day of June, 2008, is estimated to be:

TWO MILLION NINE HUNDRED ONE THOUSAND FIVE HUNDRED FIFTY DOLLARS
(\$2,901,550.00)

This appraisal report contains a total of 97 consecutively numbered pages. If any single
page is missing or out of sequence, this entire appraisal report is null and void.

Respectfully submitted,
With warmest personal regards,


APPRAISAL & FINANCIAL SERVICE COMPANY
Robert R. Fellows, "CGA"
CERTIFIED GENERAL APPRAISER
PROFESSIONAL FARM APPRAISER
License No. CGA-38
(Expiring 7-28-09)

EXHIBIT

16

EXHIBIT P

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

201 EAST CENTER STREET
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

www.racinelaw.net

SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
ERIC L. OLSEN
CONRAD J. AIKEN
RICHARD A. HEARN, M.D.
LANE V. ERICKSON
DAVID E. ALEXANDER
PATRICK N. GEORGE
SCOTT J. SMITH
JOSHUA D. JOHNSON
STEPHEN J. MUHONEN
BRENT L. WHITING
JONATHAN S. BYINGTON
DAVE BAGLEY
CAROL TIPP: VOLYN
THOMAS J. BUDGE
CANDICE M. MCHUGH
JONATHAN M. VOLYN
MARK A. SHAFFER
JASON E. FLAIG

BOISE OFFICE
101 SOUTH CAPITOL
BOULEVARD, SUITE 208
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE
477 SHOUP AVENUE
SUITE 203A
IDAHO FALLS, ID 83402
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6109

COEUR D'ALENE OFFICE
290 NORTHWEST
BOULEVARD, SUITE 106A
COEUR D'ALENE, ID 83814
TELEPHONE: (208) 785-8888

ALL OFFICES TOLL FREE
(877) 232-6101

LOUIS F. RACINE (1917-2008)
WILLIAM D. OLSON, OF COUNSEL

May 21, 2009

Pro-Serve
244-2899

Re: *Beus v. Souza and Beus*
Caribou County Case No. CV-09-1822-OC

To Whom It May Concern:

In the above-referenced matter enclosed please find two copies of Summons and copy of Complaint. Please serve the same upon Defendant **Jerry Beus** whose address is **3121 Wood Canyon Road, Soda Springs, Idaho 83276, phone: 547-3091**. Please return your Affidavit of Service and remit your statement, which we'll promptly pay. Thank you for your assistance.

Sincerely,

RANDALL C. BUDGE

RCB:rr
Enclosures



ASC

APPRAISAL & FINANCIAL SERVICE

CERTIFIED REAL ESTATE APPRAISERS IN IDAHO & UTAH

1086N 1400W, PRESTON, IDAHO 83263

TELEPHONE (208) 862-3366

**APPRAISAL REPORT
OF THE LYNN G. BEUS TRUST PROPERTY
LOCATED AT
3121 WOOD CANYON ROAD IN
SODA SPRINGS ID 83276**

FOR

**RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED
ATTORNEYS AT LAW
PO BOX 1391
POCATELLO ID 83204**

BY

**APPRAISAL & FINANCIAL SERVICE COMPANY
1086 NORTH 1400 WEST
PRESTON, IDAHO 83263**

**DATE OF VALUE -- 10 JUNE 2008
DATE OF REPORT -- 21 NOVEMBER 2008**

ASC

21 November 2008

APPRAISAL & FINANCIAL SERVICE

CERTIFIED REAL ESTATE APPRAISERS IN IDAHO & UTAH

1086N 1400W, PRIESTON, IDAHO 83263

TELEPHONE (208) 852-3366

Mr. Mark Shaffer
Attorney at Law
PO Box 1391
Pocatello ID 83204

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Dear Mr. Shaffer:

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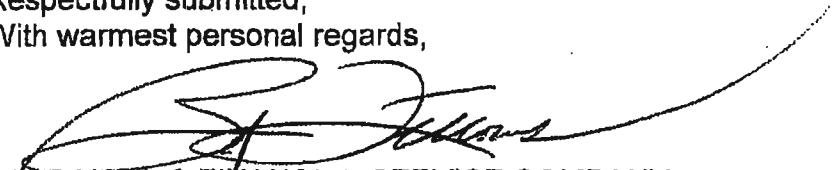
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With warmest personal regards,



APPRAISAL & FINANCIAL SERVICE COMPANY
Robert R. Fellows, "CGA"
CERTIFIED GENERAL APPRAISER
PROFESSIONAL FARM APPRAISER
License No. CGA-38
(Expiring 7-28-09)

Appraisal & Financial Svc. Co.
1086 North 1400 West
Preston, ID 83263
208-852-3366
82-0412168

INVOICE	11-24-2008 DATE	221-2619 NUMBER
---------	--------------------	--------------------

Client: RACINE OLSON NYE BUDGE & BAILEY
P O BOX 1391
POCATELLO, ID
83204
Attention: MR MARK SHAFFER

Item	Total
APPRAISAL FEE FOR SERVICES RENDERED	\$ 2,960.00

Borrower: BEUS RANCH
3121 WOOD CANYON
SODA SPRINGS, ID 83276

Please detach and include the bottom portion with your payment. Thank You! Total: \$ 2,960.00

Inv Date	Issue Date	Appraiser	Client Case #	File #	Client Phone #
11-24-2008		ROBERT E. JELLOVE "CGA"		221-2619	
FROM:		PROPERTY:			Amount Due
RACINE OLSON NYE BUDGE & BAILEY P O BOX 1391 POCATELLO, ID 83204		Borrower: BEUS RANCH 3121 WOOD CANYON SODA SPRINGS, ID 83276			\$ 2,960.00
TO:					Amount Enclosed
Attention:					\$
Appraisal & Financial Svc. Co. 1086 North 1400 West Preston, ID 83263					
Ref: Please refer		upon receipt of invoice on with your payment. Thank You!			
Appra		Financial Svc. Co.			



APPRAISAL & FINANCIAL SERVICE

CERTIFIED REAL ESTATE APPRAISERS IN IDAHO & UTAH

1080N 1400W, PRESTON, IDAHO 83203

TELEPHONE (208) 859-3366

TABLE OF CONTENTS

COVER SHEET	PAGE 1
PERSONAL LETTER	PAGE 2
TABLE OF CONTENTS	PAGE 3
THE APPRAISAL PROCESS	PAGE 4
SUMMARY OF APPRAISAL FACTS AND CONCLUSIONS	PAGE 5
GENERAL DATA	
1. IDENTIFICATION OF PROPERTY	PAGE 6
2. PURPOSE OF THE APPRAISAL	PAGE 7
3. HISTORY	PAGE 8
4. LEGAL DESCRIPTION	PAGE 8
5. SCOPE	PAGE 9
6. PROPERTY ASSESSMENT AND TAXES	PAGE 10
7. EXPOSURE TIME TO THE MARKET	PAGE 10
8. WATER	PAGE 10
9. HIGHEST AND BEST USE	PAGE 10-11
10. DEPRECIATION	PAGE 11
11. LAND CLASSIFICATION	PAGE 12
SUMMATION APPROACH	PAGE 13
COST/SALES COMPARISON APPROACH TO VALUE	PAGE 14-46
DISCUSSION OF THE COST/SALES COMPARISON APPROACH	PAGE 47
INCOME APPROACH TO VALUE	PAGE 48-50
DISCUSSION OF THE INCOME APPROACH	PAGE 51
CORRELATION AND FINAL VALUE ESTIMATE	PAGE 52
PHOTOS OF THE SUBJECT PROPERTY	PAGE 53-66
PLAT OF THE SUBJECT PROPERTY	PAGE 67-68
MAP OF SODA SPRINGS	PAGE 69
REGIONAL MAP OF SOUTHEAST IDAHO AND NORTHERN UTAH	PAGE 70
CONTINGENT AND LIMITING CONDITIONS	PAGE 71
ADDENDA	PAGE 72-91
STATEMENT & CERTIFICATE OF THE VALUE ESTIMATE	PAGE 92
STANDARD FORM RESTRICTIONS UPON DISCLOSURE AND USE	PAGE 93
ADDENDUM	PAGE 94-95
QUALIFICATIONS	PAGE 96
CLIENTELE	PAGE 97

THE APPRAISAL PROCESS

In making real estate appraisals, there are three basic approaches that may be used in the estimation of market value. These three approaches provide market data from three different sources when all are available. They are the Direct Sales Comparison Approach, the Income Approach, and the Cost, or Summation Approach, as it is called in the appraisal of rural property.

THE INCOME APPROACH has as its premises the estimation of the amount of net income that, when capitalized at a rate of return that is commensurate with similar property, will indicate the present value of the income stream.

THE COST, or SUMMATION APPROACH, has as its premise a separate valuation of the various land classes by comparison with similar type of properties that have sold in the recent past. Adjustments are made for differences with the subject to indicate one total land value. The this land value, the estimated cost to reproduce or replace the improvements is added, less any loss in value (depreciation) that may have transpired or taken place since construction.

THE MARKET DATA, or DIRECT SALES COMPARISON APPROACH, has as its premise the direct comparison of the subject's land and improvements with other properties of a similar use that have sold in the recent past. To indicate a value for the property, adjustments are made to the comparables where they differ from the subject.

Normally, each of these three approaches will indicate different value. After all the factors in each of the approaches have been carefully weighed, indications of value derived from each of the approaches are corrected to arrive at a final value estimate.

SUMMARY OF APPRAISAL FACTS AND CONCLUSIONS

PROPERTY APPRAISED:

Approximately 2525 acres of irrigated ag land, dry tillable ag land, farmstead land, dry grazing ground and non productive ground. This property is located approximately two miles East and two miles North of the City of Soda Springs in the Wood Canyon area.

ESTATE APPRAISED:

Fee Value.

APPRAISED AT THE REQUEST OF:

Mr. Mark Shaffer
Attorney at Law
PO Box 1391
Pocatello ID 83204

AUTHORIZATION:

Mr. Jerry Beus

**DATE APPRAISAL OPINIONS
ARE APPLIED:**

10 June 2008

OPINION OF VALUE:

\$2,901,550.00

PURPOSE OF THE APPRAISAL:

To establish the market value and the most probable selling price of the subject property as of the 10th day of June, 2008. The function of this appraisal report is to be used as a financial guide in matters relating to this property.

RESTRICTIONS:

This appraisal report is prepared specifically for Mr. Mark Shaffer at Racine, Olson, Nye, Budge & Bailey. Use of this appraisal report by any other party without the expressed written consent of Mark Shaffer and the appraiser is forbidden.

GENERAL DATA = The subject property consists of approximately 2525 acres of irrigated ag land, dry tillable land, farmstead land, dry grazing land and nonproductive land. There are also improvements on the subject property which consists of two homes and other agricultural building improvements. There is also an extensive sprinkling system on the subject property which allows for the irrigation of approximately 836 acres of irrigated ag land by pump and by pressurized sprinkler. This appraiser renders no opinion as to the ownership of the sprinkler equipment, the pumps or any of the buried mainline. I only render the fact that there is approximately 836 acres of irrigated ag land by the sprinkling system. We have broken down each of the individual improvements in the Cost Sales Comparison Approach to Value where you can view each of the individual improvements except for the sprinkler system. The sprinkler system is valued with the land because it is the sprinkler system which makes dry agricultural land turn into irrigated agricultural land and has a higher per acre value than does dry tillable ag land. The subject property is located approximately two miles east and approximately two miles north of the City of Soda Springs in what is known as the Wood Canyon area. It is located at an elevation of approximately 5000 feet. There is an average annual rainfall of approximately 15 inches with four distinct growing seasons. There is usually a short hot spell during the summer months, a short cold spell during the winter months and a moderate spring and fall. The average annual growing season is approximately 100 days.

PURPOSE OF THE APPRAISAL = The purpose of this appraisal report is to establish the market value and the most probable selling price of the subject property as of the 10th day of June, 2008. Market value as used in this appraisal report reflects the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and the seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed and well advised and acting in what they consider to be their best interests;
3. A reasonable time is allowed for exposure to the open market;
4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

HISTORY = According to the information provided to us the subject property has been owned by the Lynn G. Beus Trust for over a three year period, and consequently, does not have a reportable USPAP sales history.

LEGAL DESCRIPTION = The subject property is located in Section 2, Township 9 South, Range 42 East; also Section 34, Township 8 South, Range 42 East and Section 35, Township 8 South, Range 42 East. There is also some in Section 26, Township 8 South, Range 42 East. Some in Section 3, Township 9 South, Range 42 East and some in Section 10, Township 9 South, Range 42 East and Section 11, Township 9 South, Range 42 East. There is a detailed legal description on each of the individual property master sheets contained in this appraisal report which you can refer to in detail. I also invite you to look at the legal description contained in the Addenda of the appraisal report.

DEFINITION OF THE PROBLEM AND SCOPE OF THE INVESTIGATION

The problem involves the investigation of the real estate market in the subject area to arrive at a current market value of similar property to be used as a basis in estimating the value of the subject property. In considering property sales, adjustment for the time of the sale, location, physical features, condition of the sale and other items may be necessary to bring the sale and subject to comparability.

County records were researched for sales data as well as other sources available to this appraiser. Buyers and sellers were contacted and interviewed for accurate sales data and other pertinent information relating to property value. Real estate brokers and other knowledgeable persons in the real estate business were interviewed.

Many sales were researched, inspected and screened for comparability to the subject. Only those sales deemed the most reliable and comparable, by adjustment if necessary, are used to indicate a value of the subject property.

All sales used were verified by the grantor, grantee, county records, the agent who handled the sale, or person with positive knowledge of the sale conditions.

PROPERTY ASSESSMENT AND TAXES = According to the information provided to us by the Caribou County Courthouse, the most recent assessed value on the subject property is \$542,259.00 and the taxes for the year 2008 are \$5,284.06.

EXPOSURE TIME TO THE MARKET = The subject property has not been exposed to the open market as a sales transaction, and consequently, has no exposure time on the market.

WATER = According to Mr. Jerry Beus who is the operator of the farm at the present time, the subject property's water is provided by pumps and by the Wood Canyon Creek which has a filed on water right which provides the irrigation for the 836 acres of irrigated ag land of the subject property. There are no canal companies or water shares in canal companies. It is all filed on water out of the Wood Canyon drainage.

HIGHEST AND BEST USE = I have applied the tests of highest and best use to the subject property. It is my conclusion after applying the tests that the highest and best use of the subject property is in the production of agricultural commodities and/or livestock. The first test of highest and best use is legally permissible. Zoning ordinances throughout Caribou County indicate that the subject property is in compliance with all local zoning ordinances and consequently it meets the first test of highest and best use. It is presently operating as a livestock and a crop producing farm and so it meets the second test of physically possible. The other two tests of highest

and best use are maximally productive and financially feasible. I do not find any other use to which the buildings, the land and the sprinkling system could be put to and be at highest and best use and be at maximally productive or more financially feasible than as crop and a livestock producing farm. Consequently, I find it meeting all the tests of highest and best use as a crop and livestock producing property. I am sure there are those who would like to think that this property had recreational potential, and I think it does have recreational potential, it also probably has subdivision development potential, however, I find that being a possibility and not a high probability. Therefore, I do not find that being the highest and best use of the subject property as of the 10th day of June, 2008.

DEPRECIATION = Depreciation is a major factor in this appraisal report as there are several improvements which need to have the cost of replacement figured and then depreciated down to its existing condition. There are some improvements on the subject property which show normal depreciation, some which show an excessive amount of depreciation and some that are so depreciated that I find them having no contributory value. That is not to suggest that they may not have some use value and certainly that they do not have sentimental value. Contributory value, as used in this appraisal report, indicates that a buyer would pay more for the property because the improvement was there than he or she would pay if it was not there. Consequently the term contributory value. As I have previously indicated, I find some improvements on this property to have no contributory value despite the fact that there may be some sentimental or use value.

LAND CLASSIFICATION

Irrigated Ag Land	836.67 acres
Dry Tillable Ag Land	671.31 acres
Farmstead	11.00 acres
Dry Grazing	866.15 acres
Non Productive Land	<u>140.35 acres</u>
TOTAL	2525.48 acres

CARIBOU LAND TITLE, INC.

P.O. Box 608
241 South Main, #3
Soda Springs, Idaho 83276

(208) 547-4321 Office

(208) 547-2241 Fax

January 16, 2009

Mr. Mark Shaffer
Racine, Olson, Nye, Budge & Bailey Chartered
P.O. Box 1391
Pocatello, ID 83204

Re: The Lynn Beus Trust
Order No. 17710

Dear Mark:

As per our conversation and your e-mail request on January 14, 2009, we have search our tract indexes for any outstanding mortgages or releases from the time of Lynn Beus' death in 1987. I have enclosed a copy of the mortgages and releases for your information, as follows:

Mortgage No. 60294 (Beus-FLB)	Release No. 166168
Mortgage No. 113336	Passed on time (Due dates 83 & 87)
Mortgage No. 166205	Release No. 178333
Mortgage No. 166206	Release No. 178333

I have also enclosed our billing for our services. "THANK YOU" for the privilege of serving you. Please remember to designate **CARIBOU LAND TITLE, INC.**, in your next title or escrow closing transaction.

If you have any questions concerning this matter, please call Kena Ann Moore at 208-547-4321.

Very truly yours,

CARIBOU LAND TITLE, INC.

By:



KENA ANN MOORE

Customer/Note No. 11351-301

After recording, please return to:
 Farm Credit Services
 PO Box 386
 Preston, ID 83263

RELEASE AGREEMENT

For good and valuable consideration, Lender certifies as follows:

Release/Debt Fully Discharged: The note and all other indebtedness secured by the Loan Documents having been fully discharged, the following Loan Documents are released:

The Mortgage dated April 11, 1967, executed by Lynn G. Beus and Beth G. Beus, husband and wife, recorded on April 13, 1967 as Instrument No. 60294 in the records of Caribou County, State of Idaho.

"Loan Documents" include any note, security, or other documents of any kind and any amendments thereto, signed in connection with the note, identified by the above-listed note number.

STATE OF IDAHO }
 County of Caribou } ss 166168
 I hereby certify that this instrument was filed at the request
 of Caribou Title
 at 10:30 o'clock A m this 10th day of
June, 2002 in my office and duly
 recorded official Records
 Recorder Edie Izatt Jessie Stephens
 Signature Deputy 3.00 at

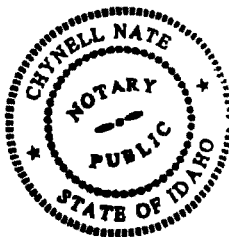
Dated: June 6, 2002

Lender: Northwest Farm Credit Services, ACA

Christine Larsen
 Authorized Agent

State of Idaho)
) ss.
 County of Franklin)

On June 6, 2002, before me personally appeared Christine Larsen, known to me to be an authorized agent of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same as its free act and deed; and on oath stated that he/she was authorized to execute said instrument.



Chynell Nate
 Notary Public for the State of Idaho
 Residing at Preston, Idaho
 My commission expires 6-13-04

FEDERAL FARM LOAN AMORTIZATION MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, That on this 11th day of April, 1967,

Lynn G. Beus and Beth G. Beus, husband and wife,

hereinafter called the Mortgagors, hereby grant, bargain, sell, convey and mortgage to THE FEDERAL LAND BANK OF SPOKANE, a corporation organized and existing under the Federal Farm Loan Act as amended, with its principal place of business in the City of Spokane, County of Spokane, State of Washington, herein-

after called the Mortgagee, the following described real estate situate in the County of Caribou, State of Idaho, to wit:

Township 8 South, Range 42 East of the Boise Meridian

Section 25: $S\frac{1}{2}SW\frac{1}{4}$

Section 26: $S\frac{1}{2}SE\frac{1}{4}$, $SW\frac{1}{4}SW\frac{1}{4}$

Section 34: $E\frac{1}{2}NE\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}$, $SE\frac{1}{4}$

Section 35: $N\frac{1}{2}$, $SW\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$

wnship 9 South, Range 42 East of the Boise Meridian

Section 2: Lots 2, 3, 4, 5, 6 and 7, $SW\frac{1}{4}NE\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}$

Section 3: Lots 1, 2 and 3, $S\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}$

Section 10: $N\frac{1}{2}N\frac{1}{2}$, $SE\frac{1}{4}NE\frac{1}{4}$

Section 11: Lots 2 and 3, $S\frac{1}{2}NW\frac{1}{4}$, $W\frac{1}{2}SW\frac{1}{4}$

Together with all pumps, motors, and other irrigation equipment now or hereafter used with said property, which are hereby declared appurtenant thereto, ✓

Release 6/10/02 # 166169

This conveyance is intended as a mortgage securing the performance of the covenants and agreements hereinafter contained, and the payment of the debt represented by one promissory note made by the mortgagors to

the mortgagee, of even date herewith, for the principal sum of _____

One Hundred Eleven Thousand Two Hundred _____ Dollars (\$111,200.00.),

with interest thereon from date at the rate of 6% per annum on the principal sum from time to time remaining unpaid, payable to the mortgagee at its office in the City of Spokane, State of Washington, as follows:

Interest only payable on _____, 19____, and _____ annually thereafter to and including _____, 19____. Thereafter 34 _____ equal _____ annual payments of \$7669.90 each, payable on the first day of January ~~xxx~~ in each year, beginning on the first day of January, 1968, and a final payment of \$7669.90, payable on the first day of January, 2002, unless matured sooner by extra payments on principal; each of said payments shall be applied first to interest, then to principal. All payments not made when due shall bear interest thereafter until paid at six per cent per annum.

Mortgagors covenant and agree:

That they are lawfully seized of said premises in fee simple, have good right and lawful authority to convey and mortgage the same, and that said premises are free from encumbrance; and each of the mortgagors will warrant and defend the same forever against the lawful claims and demands of all persons whomsoever, and this covenant shall not be extinguished by any foreclosure hereof, but shall run with the land;

To pay all debts and moneys secured hereby when due;

To keep the buildings and other improvements now or hereafter existing on said premises in good repair and not to remove or demolish or permit the removal or demolition of any thereof; not to cut or permit the cutting of timber from said premises except for domestic use; to maintain and cultivate the premises in a good and husbandlike manner, using approved methods of preserving the fertility thereof; to keep the orchards on said land properly irrigated, cultivated, sprayed, pruned and cared for; not to commit or suffer waste of any kind upon said premises; not to use or permit the use of said premises for any unlawful or objectionable purpose; and to do all acts and things necessary to preserve all water rights now or hereafter appurtenant to or used in connection with said premises;

To pay when due all taxes and assessments upon said premises and to deliver to the mortgagee proper receipts therefor; and to suffer no other lien or encumbrance prior to the lien of this mortgage to exist at any time against said premises;

To keep all buildings insured against loss or damage by fire in manner and form and in such company or companies and in such amount as shall be satisfactory to the mortgagee; to pay all premiums and charges on all such insurance when due; to deposit with the mortgagee all insurance policies affecting the mortgaged premises, with receipts showing payment of all premiums and charges affecting said policies; and that all insurance whatsoever affecting the mortgaged premises shall be made payable, in case of loss, to the mortgagee, with a mortgagee clause in favor of and satisfactory to the mortgagee. The mortgagee shall be entitled to receive the proceeds of any loss under any such policy, which, if not used in accordance with the regulations of the Farm Credit Administration for reconstruction of the buildings damaged or destroyed, may be applied by the mortgagee upon the indebtedness hereby secured in such manner as it shall elect.

If any of the mortgaged property shall be taken under right of eminent domain, the mortgagee shall be entitled at its option to receive all compensation for the portion taken and damages to the remaining portion, to be applied by the mortgagee upon the indebtedness hereby secured in such manner as it shall elect.

Should the mortgagors be or become in default in any of the covenants or agreements herein contained, then the mortgagee (whether electing to declare the whole indebtedness hereby secured due and payable or not) may, at its option, perform the same in whole or in part, and all expenditures made by the mortgagee in so doing shall draw interest at the rate of 6 per cent per annum, and shall be immediately repayable by the mortgagors without demand, and, together with interest and costs accruing thereon, shall be secured by this mortgage.

Time is material and of the essence hereof; and in case of breach of any of the covenants or agreements hereof, or if default be made in the payment of any of the sums hereby secured, or if the whole or any portion of said loan shall be expended for purposes other than those specified in the original application therefor, except by the written permission of said mortgagee, or if said land or any portion thereof shall be hereafter included in any special assessment district, then, in any such case, all indebtedness hereby secured, shall, at the election of the mortgagee, become immediately due without notice, and this mortgage may be foreclosed; but the failure of the mortgagee to exercise such option in any one or more instances shall not be considered as a waiver or relinquishment of the right to exercise such option upon or during the continuance of the same or any other default.

In case of any suit to foreclose this mortgage or to collect any charge growing out of the debt hereby secured, or any suit which the mortgagee may deem it necessary to prosecute or defend to effect or protect the lien hereof, the mortgagors agree to pay a reasonable sum as attorney's fees and all costs and legal expenses in connection with said suit, and further agree to pay the reasonable costs of searching records and abstracting or insuring the title, and such sums shall be secured hereby and included in the decree of foreclosure.

And in case of the mortgagee's non default hereunder, the mortgagee shall have the right forthwith to

thereof, and apply the same reasonable costs of collection, upon the indebtedness hereby secured, and the mortgagee shall have the right to the appointment of a receiver to collect the rents, issues and profits of the mortgaged premises. The rents, issues and profits of said premises after default are hereby assigned and mortgaged to the mortgagee as additional security for the indebtedness herein described.

This mortgage and the note secured hereby are executed and delivered under and in accordance with the said Federal Farm Loan Act and acts amendatory thereof or supplementary thereto, and are subject to all the terms, conditions and provisions thereof, which acts are made a part hereof the same as if set out in full herein.

The covenants and agreements herein contained shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

WHEREAS, mortgagors have assigned or waived, or will assign or waive to the mortgagee, as additional security for the indebtedness described herein, certain grazing leases, permits, licenses and/or privileges, to-wit:

BLM Lease I-2 (15)-209 on 1929.81 acres
Grazing Privileges on Caribou National Forest for 1000 sheep from
6-21 to 9-5

mortgagors covenant and agree that they are the lawful owners and holders thereof and that they are free from encumbrance and have not been assigned; and mortgagors further covenant and agree to procure renewals thereof upon or prior to their expiration date, to execute any instrument deemed by the mortgagee necessary to effect an assignment or waiver of such renewals to the mortgagee, and to pay all fees and charges, and to perform all acts and things necessary to preserve and keep in good standing all of said leases, permits, licenses, and/or privileges, and all renewals thereof; and they will take no action which would adversely affect any of such rights or their preference status thereunder and that in the event of foreclosure of this mortgage they will waive all claims for preference in any of such rights upon demand from the purchaser of the mortgaged property at foreclosure sale, or any successor to such purchaser; and further agree that the lands covered by said leases, permits, licenses and/or privileges and renewals thereof, shall at all times be operated in conjunction with the lands hereby mortgaged, and that neither shall be transferred to any other person separately from the other. Any leases, permits, licenses and/or privileges which the mortgagor, with the consent of the mortgagee, shall substitute for those hereinabove mentioned, shall be subject to the provision hereof. For any breach by mortgagors of any covenant or agreement in this paragraph contained, the mortgagee shall have the same rights and/or remedies as are available to it for the breach of any other covenant or agreement of the mortgagors in this mortgage contained, including but not limited to the right to declare the entire mortgage debt due and payable.

This rider is attached to and made a part of mortgage to the Federal Land Bank of Spokane, a corporation, executed by the undersigned, dated April 11 1967.

James H. Davis
William H. Davis

Grazing Rider No. 1

Form FLB 559

residing at Emmett, Idaho

IN WITNESS WHEREOF, The mortgagors have hereunto set their hands the day and year first above written.

Lynn G. Beus
Beth G. Beus

STATE OF IDAHO, }
County of Caribou } ss.

On this 13th day of April, 19 67, before me, J. P. Garner
a Notary Public in and for the State of Idaho, personally appeared _____
Lynn G. Beus and Beth G. Beus
known to me to be the persons whose names are subscribed to the within instrument and acknowledged to
me that they executed the same.

J. P. Garner
Notary Public for the State of Idaho,
residing at Preston, Idaho
My commission expires 5-11-67

60294
Amortization Mortgage

FROM

Lynn G. Beus et ux

TO

The Federal Land Bank of Spokane

STATE OF IDAHO, } ss.
County of Caribou

I hereby certify that the within instrument was filed for record in the office of the County Recorder of said County on the 13th day of April,

A.D. 1967, at 1:00 o'clock

and 20 minutes, P.M.,

at the request of Caribou Title Company

and recorded as instrument No.

in the microfilm records of Caribou County, Idaho.

County Recorder.

By , Deputy

Fee 3.90

Mail to

THE FEDERAL LAND BANK of SPOKANE
SPOKANE, WASHINGTON

meh

AMERICAN LAND TITLE ASSOCIATION
LOAN POLICY
(10-17-92)

13 0189 107 00001542

CHICAGO TITLE INSURANCE COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
 - (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
 - (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
8. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

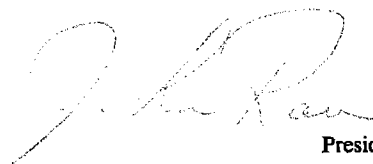
The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

In Witness Whereof, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed as of Date of Policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory.

Issued by:
CARIBOU LAND TITLE, INC.
241 S. MAIN STREET
SUITE 3
P.O. BOX 608
SODA SPRINGS, ID 83276

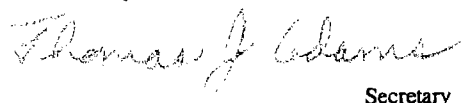
CHICAGO TITLE INSURANCE COMPANY

By:

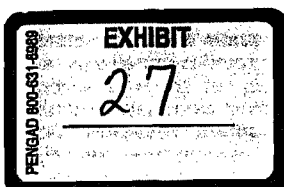


President

By:



Secretary



SCHEDULE A

OFFICE FILE NUMBER	POLICY NUMBER	DATE OF POLICY	AMOUNT OF INSURANCE	PREMIUM AMOUNT
16178	13 0189 107 001542	06/13/2002 at 5:00 o'clock P.M.	\$ 372,740.00	\$ 1,369.25

1. Name of Insured:

IRELAND BANK.

2. The estate or interest in the land which is encumbered by the insured mortgage is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

JOHN C. SOUZA, Trustee of The LYNN BEUS TRUST.

4. The insured mortgage and assignments thereof, if any, are described as follows:

Mortgage executed by The Lynn G. Beus Trust, John C. Souza, Trustee, to Ireland Bank, to secure the payment of \$372,740.00 together with interest and any other obligations secured thereby; dated June 7, 2002, recorded June 13, 2002, under recorder's instrument No. 166205, records of Caribou County, Idaho.

5. The land referred to in this Policy is described as follows:

Caribou County, Idaho:

Township 8 South, Range 42 East of the Boise Meridian:

Section 25: S½SW½.

Section 26: S½SE½, SW½SW½.

Section 34: E½NE½, E½SW½, SE½.

Section 35: N½, SW½, W½SE½.

Township 9 South, Range 42 East of the Boise Meridian:

Section 2: Lots 2, 3, 4, 5, 6 and 7, SW½NE½, S½NW½, N½SW½, NW½SE½.

Section 3: Lots 1, 2 and 3, S½NE½, SE½NW½, S½.

Section 10: N½N½, SE½NE½.

Section 11: Lots 2 and 3, S½NW½, W½SW½.

SCHEDULE B

Policy Number: 13 0189 107 001542

Loan

FILE #: 16178

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

General Exceptions:

- (1) Rights or claims of parties in possession not shown by the public records.
- (2) Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey or inspection of the premises including, but not limited to, insufficient or impaired access or matters contradictory to any survey plat shown by the public records.
- (3) Easements, or claims of easements, not shown by the public records.
- (4) Any lien, or right to lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
- (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
- (6) Taxes or special assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

Special Exceptions:

1. General taxes for the year 2002 are now an accruing lien but are not yet due nor payable.
2. Reservations and exceptions in the United States patent, and in the act authorizing the issuance thereof.

BK/PG	DESCRIPTION
2/174	W%SW%, SE%SW%, Section 25, T. 8 S., R. 42 E., B.M. E%SE%, SW%SE%, Section 26, T., 8 S., R. 42 E., B.M.
1/210	NW%, SW%, NW%SE%, NEX%, Section 35, T., 8 S., R. 42 E., B.M.
1/220	SW%NEX%, SE%, NEX%SW%, Section 2, T., 9 S., R. 42 E., B.M.
1/608	NW%SW%, Section 2 T., 9 S., R., 42 E., B.M. SE%, Section 3, T., 9 S., R., 42 E., B.M.
2/135	SW%SW%, Section 26, T., 8 S., R. 42 E., B.M. E%NEX% Section 34, T., 8 S., R. 42 E., B.M. NW%NW%, Section 35, T., 8 S., R. 42 E., B.M.
1/268	SW% Section 34, T., 8 S., R. 42 E., B.M.
1/11	NW%SE% Section 34, T., 8 S., R. 42 E., B.M. SE%SW%, S%SE%, NEX%SE%, Section 34, T. 8 S., R. 42 E., B.M.
1/73	SW%SE% Section 35, T., 8 S., R. 42 E., B.M.
1/141	NW%, NW%NEX%, Section 2, T., 9 S., R. 42 E., B.M. SW%NW%, Section 2, T, 9 S., R. 42 E., B.M.
/188	S%SW%, Section 35, T., 8 S., R. 42 E., B.M. NW%NW%, Section 2, T., 9 S., R. 42 E., B.M. NEX%NEX%, NW%SE%, NEX%, Section 3, T., 9 S., R., 42 E., B.M.
2/140	SE%SW%, Section 3, T., 9 S., R. 42 E., B.M. NW%NEX%, NW%, Section 10, T., 9 S., R. 42 E., B.M. SE%, NEX%, Section 10, T., 9 S., R., 42 E., B.M.

SCHEDULE B (cont)

Page 2

POLICY # 13 0189 107 001542

FILE # 16178

1/646 NW¼, SW¼, Section 11, T., 9 S., R., 42 E., B.M.
SW¼SW¼, Section 3, T., 9 S., R., 42 E., B.M.

3. Pole Line Easement, and all rights incidental thereto, granted by Albert Beus and Dora Beus, his wife, to Utah Power and Light Company, a corporation, by three instruments dated October 3, 1949, and recorded February 15, 1950, in Book 12 of Deeds at page 630, 631 and 632, respectively, under recorder's instrument Nos. 26652, 26653, 26654, records of Caribou County, Idaho. Said instrument affects Lots 4 and 7, SW¼NW¼ and NW¼SW¼ of Section 2, and W¼W¼ of Section 11, T. 9 S., R. 42 E., B. M.

4. Pole Line Easement, and all rights incidental thereto, granted by Albert Beus to Utah Power & Light Company, a corporation, dated August 29, 1961, recorded February 19, 1962, in Book 44 of Deeds at page 258, under recorder's instrument No. 47610, records of Caribou County, Idaho. Said instrument affects the NE¼SE¼ of Section 26, T. 8 S., R. 42 E., B.M.

5. Right of Way Easement, and all rights incidental thereto, granted by Lynn G. Beus and Beth G. Beus, husband and wife, to Idaho Power Company, a corporation, dated October 20, 1971, recorded November 4, 1971, under recorder's instrument No. 72294, records of Caribou County, Idaho. Said instrument affects the NW¼SW¼ of Section 11; SE¼NE¼, NW¼NE¼, NE¼NW¼ of Section 10; SE¼SW¼, N¼SW¼ of Section 3, T. 9 S., R. 42 E., B.M.

7. Farm Lease and any extensions thereof, and all rights incidental thereto, granted by Monte R. Whittier, successor trustee of Lynn G. Beus Trust, to Jerry Beus, a single person, dated March 26, 1986, recorded February 13, 1997, under recorder's instrument No. 153677, and amended by Addendum dated April 6, 1994, recorded February 13, 1997, under recorder's instrument No. 153678, records of Caribou County, Idaho.

8. State liens, if any, filed in the office of the Secretary of State pursuant to Chapter 19, Title 45 of the Idaho Code.

9. Financing Statements, Seed and Farm Laborer's Liens against crops which are filed in the office of the Secretary of State.

10. Rights of the public in and to that portion of said premises lying within Wood Canyon Road.

11. Any adverse claim based on the assertion that the location of the

SCHEDULE B (cont)

Page 3

POLICY # 13 0189 107 001542

FILE # 16178

Wood Canyon Creek has changed.

12. Any claims arising from the difference in the mean high water line of Wood Canyon Creek and the meander line as shown by the Government Survey.

13. Rights or easements in favor of the public over that part of the land covered by navigable streams.

...END OF SCHEDULE B...

Part I.

SCHEDULE B — PART II

Policy Number: 13 0189 107 001542 (16178)

Loan

EXCEPTIONS FROM COVERAGE

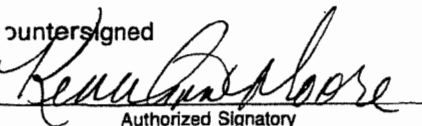
In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

Special Exceptions:

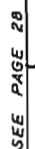
1. Mortgage executed by The Lynn G. Beus Trust, John C. Souza, Trustee, to Ireland Bank, to secure the payment of \$235,000.00 together with interest and any other obligations secured thereby; dated June 7, 2002, recorded June 13, 2002, under recorder's instrument No. 166206, records of Caribou County, Idaho.

...END OF SCHEDULE B...
Part II.

Countersigned


Authorized Signatory

40008



SEE PAGE 30

This plat is made solely for the purpose of assisting in locating the land, and the company assumes no liability for variations, if any, with an actual survey.

(c) **Amount of Insurance.** The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

(i) the Amount of Insurance stated in Schedule A;

(ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to

provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) **To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.**

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of either of the options provided for in paragraphs a(i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) **To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.**

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

AMERICAN LAND TITLE ASSOCIATION COMMITMENT — 1966

CHICAGO TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

CHICAGO TITLE INSURANCE COMPANY, a corporation of Missouri, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

IN WITNESS WHEREOF, Chicago Title Insurance Company has caused this Commitment to be signed and sealed as of the effective date of Commitment shown in Schedule A, the Commitment to become valid when countersigned by an authorized signatory.

Issued by:
CARIBOU LAND TITLE, INC.
241 S. MAIN STREET
SUITE 3
P.O. BOX 608
SODA SPRINGS, ID 83276

CHICAGO TITLE INSURANCE COMPANY

By:

Robert A. St. E.
President

By:

M. A. Jones
Secretary



Dora Jean Benson
Authorized Signatory

COMMITMENT FOR TITLE INSURANCE

SCHEDULE A

File Number: 16178

1. Effective Date: 05/21/2002 at 5:00 o'clock P.M.

2. Policy or Policies to be issued:

A. ☐ ALTA Owner's Policy, (10-17-92) ☒ Standard Coverage ☐ Extended coverage Amount \$ \$.00
Premium \$

Proposed Insured:

B. ☐ ALTA Loan Policy, (10-17-92) ☒ Standard Coverage ☐ Extended coverage Amount \$381,000.00
Premium \$

Proposed Insured:
IRELAND BANK.

C. Amount \$
Premium \$

3. The estate or interest in the land described or referred to in this Commitment and covered herein is:

FEE SIMPLE

4. Title to the Fee Simple estate or interest in said land is at the effective date hereof
vested in: BETH G. BEUS, a widow, and
R. M. Whittier, as Trustee of the LYNN BEUS TRUST., one-half interest each.

5. The land referred to in this Commitment is described as follows:

SEE SCHEDULE C.

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - SECTION I

File Number: 16178

Page:

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

- A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
- B. General Exceptions:
- (1) Rights or claims of parties in possession not shown by the public records.*
 - (2) Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey or inspection of the premises including, but not limited to, insufficient or impaired access or matters contradictory to any survey plat shown by the public records.*
 - (3) Easements, or claims of easements, not shown by the public records.*
 - (4) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.*
 - (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.*
 - (6) Taxes or special assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.*

*Paragraphs 1, 2, 3, 4, 5 and 6 will not appear as printed exceptions on extended coverage policies, except as to such parts thereof which may be typed as a Special Exception in Schedule B-Section 2.

C. Special Exceptions:

(See Schedule B-Section 2 beginning on next page)

NOTE: In the event this transaction fails to close and this Commitment is cancelled, a fee will be charged to comply with the State Insurance Code.

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - SECTION 2

File Number: 16178

Special Exceptions:

1. General taxes for the year 2001 see Tax Receipt Nos. 1685 and 1960, in the original sums of \$1,745.00 and \$5,117.50, show the first half is delinquent and the second half is due and payable on or before June 20, 2002. General taxes for the year 2002 are now an accruing lien but are not yet due nor payable.

2. Reservations and exceptions in the United States patent, and in the act authorizing the issuance thereof.

BK/PG	DESCRIPTION
2/174	W%SW%, SE%SW%, Section 25, T. 8 S., R. 42 E., B.M. E%SE%, SW%SE%, Section 26, T., 8 S., R. 42 E., B.M. NW%, SW%, NW%SE%, NE%, Section 35, T., 8 S., R. 42 E., B.M.
1/210	SW%NE%, SE%, NE%SW%, Section 2, T., 9 S., R. 42 E., B.M.
1/220	NW%SW%, Section 2 T., 9 S., R., 42 E., B.M. SE%, Section 3, T., 9 S., R., 42 E., B.M.
1/608	SW%SW%, Section 26, T., 8 S., R. 42 E., B.M. E%NE% Section 34, T., 8 S., R. 42 E., B.M. NW%NW%, Section 35, T., 8 S., R. 42 E., B.M.
2/135	SW% Section 34, T., 8 S., R. 42 E., B.M. NW%SE% Section 34, T., 8 S., R. 42 E., B.M.
1/268	SE%SW%, S%SE%, NE%SE%, Section 34, T. 8 S., R. 42 E., B.M.
1/11	SW%SE% Section 35, T., 8 S., R. 42 E., B.M. NW%, NW%NE%, Section 2, T., 9 S., R. 42 E., B.M.
1/73	SW%NW%, Section 2, T, 9 S., R. 42 E., B.M.
1/141	S%SW%, Section 35, T., 8 S., R. 42 E., B.M. NW%NW%, Section 2, T., 9 S., R. 42 E., B.M. NE%NE%, NW%SE%, NE%, Section 3, T., 9 S., R., 42 E., B.M.
1/188	SE%SW%, Section 3, T., 9 S., R. 42 E., B.M. NW%NE%, NW%, Section 10, T., 9 S., R. 42 E., B.M.
2/140	SE%, NE%, Section 10, T., 9 S., R., 42 E., B.M. NW%, SW%, Section 11, T., 9 S., R., 42 E., B.M.
1/646	SW%SW%, Section 3, T., 9 S., R., 42 E., B.M.

3. Pole Line Easement, and all rights incidental thereto, granted by Albert Beus and Dora Beus, his wife, to Utah Power and Light Company, a corporation, by three instruments dated October 3, 1949, and recorded February 15, 1950, in Book 12 of Deeds at page 630, 631 and 632, respectively, under recorder's instrument Nos. 26652, 26653, 26654, records of Caribou County, Idaho. Said instrument affects Lots 4 and 7, SW%NW% and NW%SW% of Section 2, and W%W% of Section 11, T. 9 S., R. 42 E., B. M.

4. Pole Line Easement, and all rights incidental thereto, granted by Albert Beus to Utah Power & Light Company, a corporation, dated August 29, 1961, recorded February 19, 1962, in Book 44 of Deeds at page 258, under
SCHEDULE B - SECTION 2 This Commitment is not valid without Schedule B - Section 1

16178

recorder's instrument No. 47610, records of Caribou County, Idaho. Said instrument affects the NE%SE% of Section 26, T. 8 S., R. 42 E., B.M.

5. Mortgage executed by Lynn G. Beus and Beth G. Beus, husband and wife, to The Federal Land Bank of Spokane, a corporation, to secure the payment of \$111,200.00 together with interest and any other obligations secured thereby; dated April 11, 1967, recorded April 13, 1967, under recorder's instrument No. 60294; and assigned by Assignment of Mortgage to Northwest Farm Credit Services, ACA, dated May 21, 199, recorded May 25, 1999, under recorder's instrument No. 159114, records of Caribou County, Idaho.

6. Right of Way Easement, and all rights incidental thereto, granted by Lynn G. Beus and Beth G. Beus, husband and wife, to Idaho Power Company, a corporation, dated October 20, 1971, recorded November 4, 1971, under recorder's instrument No. 72294, records of Caribou County, Idaho. Said instrument affects the NW%SW% of Section 11; SE%NE%, NW%NE%, NE%NW% of Section 10; SE%SW%, N%SW% of Section 3, T. 9 S., R. 42 E., B.M.

7. Farm Lease, and all rights incidental thereto, granted by Monte R. Whittier, successor trustee of Lynn G. Beus Trust, to Jerry Beus, a single person, dated March 26, 1986, recorded February 13, 1997, under recorder's instrument No. 153677, and amended by addendum dated April 6, 1994, recorded February 13, 1997, under recorder's instrument No. 153678, records of Caribou County, Idaho.

8. State liens, if any, filed in the office of the Secretary of State pursuant to Chapter 19, Title 45 of the Idaho Code.

9. Financing Statements, Seed and Farm Laborer's Liens against crops which are filed in the office of the Secretary of State.

10. Rights of the public in and to that portion of said premises lying within Wood Canyon Road.

11. Any adverse claim based on the assertion that the location of the Wood Canyon Creek has changed.

12. Any claims arising from the difference in the mean high water line of Wood Canyon Creek and the meander line as shown by the Government Survey.

13. Rights or easements in favor of the public over that part of the land covered by navigable streams.

DATE DOWN ENDORSEMENT

Dated: June 5, 2002

Premium: \$ 00.00

Attached To Commitment No. 16178

(Lynn G. Beus Trust)

Issued by

CHICAGO TITLE INSURANCE COMPANY

This endorsement is made a part of said Commitment including any prior endorsements, and is subject to the Schedules, Terms, Provisions and Conditions and Stipulations therein, except as modified by the provisions hereof:

1. Schedule A of the above Commitment is hereby amended in the following particulars:

(a) The effective date of the Commitment including extensions is:

June 5, 2002 at 5:00 O'Clock P.M.

(b) The title to the estate or interest in the land is at the extended effective date hereof vested in:

THE LYNN G. BEUS TRUST.

2. Schedule B of the above Commitment including any prior endorsements is hereby amended in the following particulars:

(a) The Special Exceptions at the following numbered paragraphs are hereby deleted:

None.

(b) The Special Exceptions at the following numbered paragraphs are hereby added:

None.

CHICAGO TITLE INSURANCE COMPANY

By:

John R. ...
President

By:

Thomas J. Adams
Secretary



Hona Jean Benson
Authorized Signature

STANDARD EXCEPTIONS FOR OWNER'S POLICY

The owner's policy will be subject to the mortgage, if any, noted under item one of Section 1 of Schedule B hereof and to the following exceptions: (1) rights or claims of parties in possession not shown by the public records; (2) encroachments, overlaps, boundary line disputes, and any matters which would be disclosed by an accurate survey and inspection of the premises; (3) easements, or claims of easements, not shown by the public records; (4) any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records; (5) taxes or special assessments which are not shown as existing liens by the public records.

CONDITIONS AND STIPULATIONS

1. The term "mortgage," when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, the Exclusions from Coverage and the Conditions and Stipulations of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

SCHEDULE C

File Number: 16178 _____

The land referred to in this Commitment is described as follows:
Caribou County, Idaho:

Township 8 South, Range 42 East of the Boise Meridian:

- Section 25: S½SW¼.
- Section 26: S½SE¼, SW½SW¼.
- Section 34: E½NE¼, E½SW¼, SE¼.
- Section 35: N½, SW¼, W½SE¼.

Township 9 South, Range 42 East of the Boise Meridian:

- Section 2: Lots 2, 3, 4, 5, 6 and 7, SW½NE¼, S½NW¼, N½SW¼, NW½SE¼.
- Section 3: Lots 1, 2 and 3, S½NE¼, SE½NW¼, S½.
- Section 10: N½N¼, SE½NE¼.
- Section 11: Lots 2 and 3, S½NW¼, W½SW¼.

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

201 EAST CENTER STREET
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

www.racinelaw.net

SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC L. OLSEN
CONRAD J. AIKEN
RICHARD A. HEARN, M.D.
DAVID E. ALEXANDER
LANE V. ERICKSON
PATRICK N. GEORGE
SCOTT J. SMITH
STEPHEN J. MUHONEN
BRENT L. WHITING
JUSTIN R. ELLIS
JOSHUA D. JOHNSON
JONATHAN S. BYINGTON
DAVE BAGLEY
CAROL TIPPI VOLYN
THOMAS J. BUDGE
CANDICE M. MCHUGH
JONATHAN M. VOLYN

BOISE OFFICE
101 SOUTH CAPITOL
BOULEVARD, SUITE 208
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FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE
477 SHoup AVENUE
SUITE 203A
IDAHO FALLS, ID 83402
TELEPHONE: (208) 828-6101
FACSIMILE: (208) 828-6108

COEUR D'ALENE OFFICE
230 NORTHWEST
BOULEVARD, SUITE 106A
COEUR D'ALENE, ID 83814
TELEPHONE: (208) 765-8888

ALL OFFICES TOLL FREE
(877) 232-6101

LOUIS F. RACINE (1917-2008)
WILLIAM D. OLSON, OF COUNSEL

October 20, 2008

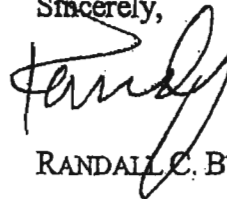
John C. Souza, Trustee
Lynn G. Beus Family Trust
P.O. Box 6359
Pocatello, ID 83205-6359

Re: Lynn G. Beus Testamentary Trust

Dear John:

Enclosed please find the original and extra copy of a proposed Trustee's Conveyance Deed for the purpose of distributing the real property out to Jerry, Doug and Dallas, each to receive an undivided one-third interest as tenants in common. Please sign and return the original. I'll then record it and return copies to you, Jerry, Doug and Dallas. If you have any questions, give me a call. Thanks.

Sincerely,



RANDALL C. BUDGE

RCB:rr

Enclosure

cc: Dallas Beus
Doug Beus
Jerry Beus

Exh. No. 35

Date

Name

M & M Court Reporting

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

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LOUIS F. RACINE (1917-2008)
WILLIAM D. OLSON, OF COUNSEL

January 13, 2009

John C. Souza, Trustee
Lynn G. Beus Family Trust
PO Box 6359
Pocatello, Idaho 83205-6359

Re: Lynn G. Beus Testamentary Trust

Dear John:

The Memorandum of Understanding ("MOU") which we drafted to set forth the terms of the agreement entered into in principle on October 15, 2008, between you as Trustee and Jerry, Dallas and Doug as residual beneficiaries, was signed by Dallas and Doug but is yet to be signed by you and Jerry. Our understanding is that you are willing to execute this MOU or whatever other agreement may be entered into between the residual beneficiaries to provide for the termination of the Trust and disposition of the ranch real property.

While we are continuing our good faith efforts to negotiate a mutually satisfactory agreement between the beneficiaries to avoid litigation, and are working with Jerry's attorney Clyde G. Nelson to this end, thus far no agreement has been reached and the parties remain at impasse. Accordingly, on behalf of residual beneficiaries Doug and Dallas Beus, demand is made that you immediately take action to perform your responsibilities as Trustee under the Trust Agreement as described below.

1. Farm Lease. Action should be taken to enforce Jerry's obligations under the Farm Lease dated January 1, 2008, owing for 2008. First, this includes payment of all real property taxes assessed against the property for 2008 and any that remains owing for prior years. Second, the \$12,000 per year annual rent under the 2007 Farm Lease has not been fully paid. The pro-rated

Exh. No. 36

Date:

Name:

M & M Court Reporting

January 13, 2009

Page 2

amount owing subsequent to Beth's death, being from June 10, 2008 through year-end, has not been paid and is past-due and owing, one-third to Doug and one-third to Dallas. Paragraph 5 of the MOU provided for this payment, but since Jerry has not signed the MOU and has not paid his rental obligation, it is incumbent upon you as trustee to collect the amount plus interest and remit the shares owing to Doug and Dallas pro-rata based upon their undivided one-third ownership interests.

2. Sale of Trust Assets and Distribution of Proceeds. Lynn Beus's Will dated June 27, 1983, clearly sets forth the testamentary trust provisions. A copy of the Will is enclosed for your convenient reference. Paragraph Sixth.B.2 provides in pertinent part:

"2. At the death of my spouse, this Trust shall close and terminate and all remaining assets, including any undistributed income, if any, shall be distributed as hereafter set out."

Paragraph Seventh and Eighth deal with the farmland, provide Jerry with the first option to lease and give each of the children the "first option to buy the land" upon sale. It further and provides for the sale of the property and equal division of the proceeds between the three beneficiaries if they are unable to agree upon continued operation, to-wit:

"If my children are unable to agree upon the operation, management or division of the real property, following the death of my wife, my trustee is instructed to sell the same and to divide the proceeds equally between Dallas, Jerry and Doug after all expenses, taxes and liens of any kind and nature against the trust property is paid."

Based on the foregoing, demand is hereby made that you immediately proceed to list and sell all real property and improvements and equally divide the net proceeds in accordance with the Trust.

We question the validity and enforceability of the Trust Agreement dated May 14, 1987, which was entered into between Max Whittier acting as personal representative of the Estate of Lynn G. Beus, Max Whittier as grantor and Max Whittier as trustee of the Trust, to the extent that it makes any alteration of the terms of the testamentary trust set forth in the Will, quite obviously because Lynn G. Beus was deceased and not a party to said agreement. The Trust Agreement was not necessary and apparently entered into as a matter of convenience for Max Whittier in administering the testamentary trust for the lifetime beneficiary, Beth Beus. Regardless, that Trust Agreement acknowledged the Trustee's obligation to follow the directives of Lynn G. Beus set forth in his Will as discussed above, stating in paragraph Sixth in relevant part as follows:

"However, the trustee shall attempt to follow the desires of Lynn G. Beus as set forth in his Last Will and Testament dated June 27, 1983."

January 13, 2009

Page 3

Pursuant to agreement of the residual beneficiaries to have the property appraised with the cost of the appraisal shared equally, Bob Fellows of Preston has completed an appraisal of the property, copy of which is enclosed. Jerry has raised some minor questions pertaining to the classification of lands as set forth in the appraisal which is in the process of being resolved with the appraiser Bob Fellows. Any effect on the appraised value should be minor.

As set forth in Mark Shaffer's recent letter to you of January 7, 2009, Doug and Dallas propose to list the property with Lisa Ayers of Gate City Real Estate in Soda Springs, which is part of the Nationwide MLS system. She has agreed to the reduced commission of 4% relating to an in-office sale, and 5% if another realtor is involved resulting in a commission split. She also has an interested buyer in California and is quite familiar with the local real estate market and I believe was even suggested by Jerry previously as a relative by marriage.

Doug and Dallas agree to list the property at the appraised price. Accordingly, please enter into a listing agreement and provide a copy to each of the beneficiaries. Be sure that the listing notes that the beneficiaries have a right of first refusal and are excluded from the listing should the property be acquired by one of them.

A dispute exists between the beneficiaries regarding the distribution of the proceeds because Jerry at this point is claiming that he is entitled to receive reimbursement for certain improvements and because he is asserting that Doug and Dallas should be responsible for a share of the DBL Company, Inc. Mortgage dated May 8, 2007, Caribou County Recorder's Instrument No. 178119 pursuant to which you, as trustee, pledged the trust real property as security for personal operating loans of Jerry. It remains Dallas and Doug's position that Jerry is solely responsible for the mortgages which relate to his personal operating loans based on information we've been provided by Ireland Bank and DBL Company, Inc. While Doug and Dallas acknowledge that Jerry is entitled to receive the proceeds from the unattached hand lines and wheel lines to the extent they are included in any sale and may be entitled to some reimbursement relating to the buried main line as an improvement to the real property, they dispute that he has made or is entitled to any other improvements to the real property, inasmuch as no such right exists under any of the lease agreements in place when the improvements were made and there is no other legal authority in support of such a claim since he is clearly responsible for normal operation and maintenance expenses under the lease agreements. Accordingly unless these disagreements between the beneficiaries are resolved, upon sale of the property the net proceeds should be paid to the District Court in an interpleader action allowing the beneficiaries to litigate their positions with distribution to be made per Court Order.

Please confirm what action you intend to take and when in response to the foregoing requests. If you are unwilling to perform your responsibilities as trustee in accordance with the terms of the Trust Agreement and absent an agreement between the beneficiaries on these issues, we have been instructed by Dallas and Doug to take legal action against you as trustee and individually. In the event such legal action is necessary, they intend to seek to recover reasonable attorney fees and costs

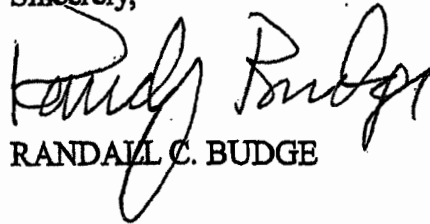
January 13, 2009

Page 4

incurred.

Please advise at your earliest convenience.

Sincerely,



RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Clyde G. Nelson (w/encls.)
Doug Beus (w/encls.)
Dallas Beus (w/encls.)

JOHN C. SOUZA, PLLC

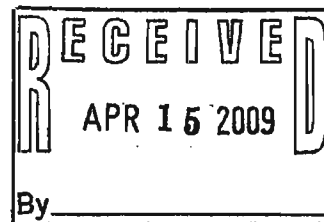
Attorney at Law

P.O. Box 6359 Pocatello, Id 83201
Ph: 234-1234 / Fax: 234-1244

April 3, 2009

Clyde Nelson
P.O. Box 797
Soda Springs, ID 83276

Randy Budge
P.O. Box 1391
Pocatello, ID 83204



RE: BEUS ESTATE

Dear Randy and Clyde,

This letter is intended to give my chronology of what has happened recently with the trustee and get some consensus on how to proceed.

Randy, since our last conversation there has been considerable action and I thought progress made to resolve this case without litigation.

More specifically, within the last few weeks I have had conversations, with Jerry and his counsel, Clyde, to get an agreement. I had been advised that the beneficiaries were trying to work out an agreement. This resulted in me being advised that the brothers had an agreement in principle to settle the case. Therefore, no action was taken on my part to sell the property, but to await the details of the "deal."

I had also been advised by Jerry and Dallas that there was an opportunity for a "wildlife" easement on the property which would generate considerable funds, including funds to purchase the interest of Dallas and/or Doug.

Exh. No.	37
Date	
Name	

I say either because I then had a personal meeting with Jerry and Dallas at my office to discuss the easement and how they wanted to proceed. They had been to the Fish and Game office to discuss the easement. They both were positive toward the reality of the easement.

At that meeting it was represented to me by Jerry and Dallas that Jerry and Dallas wanted to keep the ranch and run it together and "cash out" the interests of Doug. This was the information I had at that time. We discussed in some detail the day to day operation of the ranch. For example, we discussed;

1. The extension of the main line
2. The spring work
3. The water right claim
4. The easement
5. Payment of the lease payments, taxes, etc.

Shortly after this meeting Jerry called and indicated that Dallas did not want to proceed with the farming together but that they were still working to negotiate an agreement. In particular, the easement option was to be pursued to provide the funds for Dallas and Doug. Again all of this has been within the last couple of weeks.

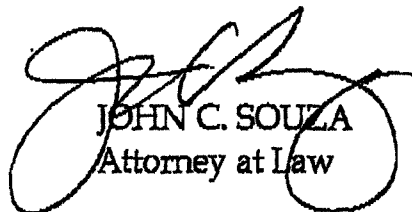
Your letter is certainly different from what my experience had been and what I understood. In that light, there are now numerous issues that need to be addressed:

1. As Trustee I agree I have the duty to sell the property. However, my concern is that there appears to be a significant difference as to a listing price. This is based upon the difference in terms of what the actual acreage is as to both the dry farm ground and the irrigated acres. It would appear we need a new appraisal or have the appraiser modify his appraisal to address this issue.
2. Another factor as to the listing and the appraisal is the lease, its value, and how it will be disclosed in the listing.
3. The pursuit of the easement would be of benefit to the beneficiaries and needs to be addressed.

4. The extension and improvement of the mainline needs to be completed. There are funds available that need to be spent this spring. This will add to the value of the property.
5. The continuance of the water right claim process needs to be resolved. When I had the meeting with Jerry and Dallas recently, the consensus was to continue with the process. As this has been discussed before, the matter is set this spring for further proceedings. A definite decision needs to be made on this matter.
6. In a recent conversation with Jerry, the issue of the tax consequences for the brothers was discussed. The issues relate to them individually, collectively and as to the trust. For example, if Dallas and Doug are paid for the easement money what is the tax consequence for all involved. I told Jerry that I would contact the accountant that had done the work for the trust previously, Bruce Brown, to advise him of the concerns. The issue for me now is whether each beneficiary is going to get their own tax advice, or shall the trust employ the services of Bruce Brown or someone else. Please advise.
7. The growing season is upon us and it appears the brothers are not going to farm the ranch themselves. Therefore, I plan to sublease the farm to farmers in the area and Jerry can oversee the property to get the farm work begun.

Please advise if anything further is needed at this time.

Cordially,



JOHN C. SOUZA
Attorney at Law

JCS/db

COURT MINUTES

CV-2009-0001822-OC

Dallas Beus, etal. vs. John C. Souza, etal.

Hearing type: Motion for Summary Judgment

Hearing date: 10/19/2009

Time: 9:03 am

Judge: David C Nye

Courtroom: 300

Court reporter: Stephanie Morse

Minutes Clerk: Amy Wegner

Randy Budge - Attorney for Plaintiff

Stephen Smith - Attorney for Defendant

Thomas Holmes – Attorney for Defendant

9:05	PA Randy Budge – oral argument
9:46	DA Stephen Smith – responsive argument
10:19	DA Thomas Holmes – responsive argument
10:26	DA Stephen Smith – responsive argument
10:29	PA Randy Budge – rebuttal argument
10:42	Court takes matter under advisement, will issue a decision in 30 days
10:42	End

IN THE COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

Dallas Bevs, et al.

Plaintiff,

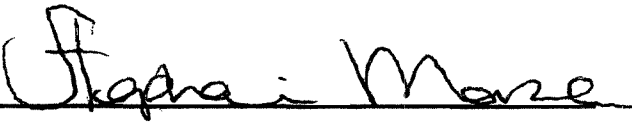
vs.

John Souza, et al.

Defendant.

Case No. CV - 2009 - 1822-OC

The hearing held on October 19, 09 in the above-entitled
matter is estimated to be more than 100 pages.



STEPHANIE MORSE

JUDGE NYE'S COURT REPORTER